# A HANDY BOOK
ON
# CRIMINAL LAW
APPLICABLE CHIEFLY TO
# COMMERCIAL TRANSACTIONS
BY
W. CAMPBELL SLEIGH
BARRISTER AT LAW.

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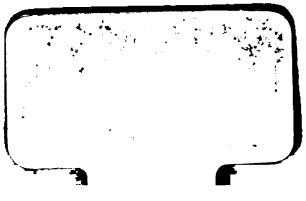

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## COMMERCIAL TRANSACTIONS.

BY

W. CAMPBELL SLEIGH, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"It is incumbent upon every man to be acquainted with those laws at least with which he is immediately concerned."—BLACKSTONE.

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# PREFACE.

THE object of this little Treatise is:—

To supply the Merchant and Tradesman with such an exposition of those laws which most commonly concern their every-day transactions as shall, to some extent, enable them to guard against the knavery and imposition so frequently practised with success on the commercial community.

THE TEMPLE,

*November*, 1858.

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| Alis. P.C.L. | Alison's Principles of the Crown Law of Scotland. |
| Arch. C.P. | Archbold's Pleading in Council Cases |
| Blackst. Com. | Blackstone's Commentaries on the Laws of England. |
| Campb. | Campbell's Reports. |
| C. & K. | Carrington and Kirwan's Reports. |
| C. & M. | Carrington and Marshman's Reports. |
| C. & P. | ———— and Payne's Reports. |
| Cox C. C. | Cox's Reports of Crown Cases. |
| C.C.C. | Central Criminal Court Reports. |
| C.L.C.R. | Report of Criminal Law Commissioners. |
| Dears. | Dearsly's Crown Cases Reserved. |
| D. & B. | ——— and Bell's ———— |
| Den. | Denison's Crown Cases Reserved. |
| Dow. & R. | Dowling and Ryland's Reports. |
| Exch. | Exchequer Reports. |
| E.P.C. | East's Pleas of the Crown. |
| Hale | Hale's ———— |
| Hawk. | Hawkin's ———— |
| Inst. | Coke's Institutes. |
| Leach | Leach's Crown Cases. |
| Lewin | Lewin's Crown Cases. |
| L.J.M.C. | Law Journal (Magistrates' Cases). |
| M.C.C. | Moody's Crown Cases. |
| M. & R. | Moody's and Robinson's Reports. |
| Power's Rosc. | Power's Edition of Roscoe on Evidence. |
| Russ. by Grea. | Russell on Crimes, by Greaves. |
| Ry. & M. | Ryan and Moody's Reports. |
| R. & R. | Russell and Ryan's Crown Cases. |
| T.R. | Term Reports. |

# A HANDY BOOK

ON

# CRIMINAL LAW.

## CHAPTER I.

INTRODUCTORY.—DEFINITION OF AN OFFENCE.—OF CRIMINAL IRRESPONSIBILITY.—OF FELONIES AND MISDEMEANORS.—OF THE GRAND JURY.

THE laws by which the *rights* of society are enforced, and the *wrongs* redressed, are but little known to the bulk of the community. Were it otherwise—were the honest portion of mankind more thoroughly aware of the distinction between *civil* and *criminal* wrongful acts, and the legal grounds upon which the latter are distinguishable from the former—the dishonest would find their attempts at the commission of offences less frequently successful. To this ignorance is referable much of the litigation which occupies our criminal courts of justice: hence the obvious importance that every one engaged in commercial transactions should adopt the advice of that great judge and commentator, Blackstone:—"It is incumbent upon every man to be acquainted with those laws at least with which he is immediately concerned."*

* Blackstone's "Commentaries," book i. p. 7.

And now, Reader, in addressing you throughout this little book, I shall assume you are engaged in commercial pursuits of one kind or other, and that as such, whether merchant or tradesman, you are desirous to acquire some practical information touching those laws with which you are immediately concerned.

I am aware that there prevails amongst the bulk of the community a sort of instinctive dread that legal knowledge is wholly beyond the comprehension of ordinary minds. True it is, the attainment of anything approaching to an intimate knowledge of law and its technicalities would, to persons engaged in commerce or trade, be a task as difficult as it would be useless; but the amount and nature of the information indicated by Blackstone, and about to be laid before the reader, is as comprehensible by persons of ordinary education and mental capacity as the first four rules in arithmetic.

As far as practicable I shall avoid the use of technical phrases, but some are so intimately interwoven with the subjects hereinafter noticed, that it will be impossible wholly to omit them. In reference to these, therefore, as they occur, I will give you such explanation of their legal signification as shall enable you to appreciate their value and understand their application.

Of course you are familiar with the old axiom, that the law of England provides a remedy for every wrong. Accepting this as substantially correct, which you safely may, I dare say you have been often puzzled to discover the particular remedy, in a legal point of view, applicable to a particular

wrong: upon this point I shall endeavour to inform you as we go along.

Wrongs have been classified under the heads of *private* wrongs—such as breaches of contract—which, as you probably know, are capable of civil remedies only; and *public* wrongs or *crimes*—such as murder, arson, robbery, and those offences we are about to consider—for which the law provides penal remedies. Touching the graver crimes, such as those just enumerated—offences perpetrated for the most part under unanticipated circumstances over which we can have no control, and against which no precaution can avail—it is obvious that a knowledge of the laws by which they are redressed is, as compared to the offences to which the commercial community is mostly subject, of comparatively trifling importance. Hence, I do not intend to make such crimes the subject of this work; but rather to direct your attention to the special consideration of matters, a knowledge of which to you, as engaged in business, may be of importance at any moment. But before we go further into the subject, it will be as well that you should clearly understand what, in the eye of the law, constitutes an *offence*, and consequently punishable.

An *offence*, then, is an act committed or omitted in violation of law, to the injury of the public at large, for which the law provides some punishment or penalty, thereby indicating that the act done is regarded as a public wrong, for which the transgressor must make atonement to society. You may, therefore, safely pronounce any act or omission to which the law annexes penal consequences, an offence, the punishment prescribed implying that the doing

of such act is a detriment or wrong to the public. And in reference to what act or acts constitute an offence, let me impress upon your mind that no act or acts, or combination of acts, will constitute any one of those about which I am going to treat, unless the act be the result of, and accompanied by, a fraudulent and corrupt intention. For example, if A take your goods, with your consent, intending to pay their value, but subsequently finding himself unable to do so, make default, he does you a private wrong; whereas, if he obtain possession of your goods by some trick or artifice, with an intention at the time never to pay, but wholly to defraud you of them and their value, the law treats this as an offence, and awards a punishment for its commission.

And here I may remark, that all persons who are present, aiding and abetting in the commission of an offence, are equally guilty with the person who actually commits it. And even a person wholly absent at the actual commission of the offence is just as punishable as he whose hands perpetrate it, provided he have previously recommended, counselled, and assisted the actual perpetrator: or, if well knowing an offence to have been committed, he harbour and protect the person who had committed it. The former is called, in legal language, an accessary before the fact—the latter, an accessary after the fact.

Assuming that every violator of the law is amenable to justice and punishable, it is as well that we should here pause to inquire what exceptions there are to this rule,—for I need not remind you that there are exceptions to every general rule. That the law exempts some persons from its penalties is well

known, and reason, mercy, and justice warrant every such exemption, as we shall presently see. Blackstone has well said that "the several pleas and excuses which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, may be reduced to this single consideration,—the want or defect of *will*. An involuntary act, as it has no claim to merit, so neither can it induce any guilt: the concurrence of the will, when it has its choice either to do or to avoid the fact in question, being the only thing that renders human actions praiseworthy or culpable; indeed, to make a complete crime cognisable by human laws there must be both a *will* and an *act*: for although a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet as no temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by outward actions, it therefore cannot punish for what it cannot know, and for this reason an *overt* act, or open evidence, is necessary in order to demonstrate the depravity of the will, before a man is liable to punishment. So that to constitute a crime against human laws there must be, first, a vicious will; and, secondly, an unlawful act consequent upon such vicious will." The same learned jurist lays it down as a general rule that no person shall be excused from punishment for disobedience to the laws of his country, excepting such as are expressly defined and exempted by the laws themselves.* Sir William Russell has classified the exemptions from punishment under four heads. 1. Infancy. 2. Insanity

* Blackstone's Commentaries, book iv. c. 2.

*and idiocy.* 3. Subjection to the power of others. 4. Ignorance.

1. *Infancy.*—Legally speaking, every one is an *infant* until he or she attain the age of twenty-one *years.* But, for the purposes of the criminal law, a *person* is held to be excusable only until he shall *reach the age of* discretion. To give you anything like a sketch of the learned discussions which have arisen on the question of what should be considered the *age of discretion*, would be here wholly out of place: suffice it to say, the general understanding amongst jurists appears to be that under the age of seven years an infant shall be considered wholly and absolutely irresponsible for his acts: at fourteen years of age he shall be presumed to be of full discretion, capable of discerning between right and wrong, and consequently responsible like older persons: between the ages of seven and fourteen, although the presumption shall be that at such tender age an infant is unacquainted with guilt, yet such presumption may be weakened or entirely destroyed, according to the particular facts and circumstances under which he may do an unlawful act. But in order to justify the conviction of a child between the ages of seven and fourteen, the prisoner must be proved by the clearest evidence to have acted with deliberation, and that he was actuated by malice. Where an infant between eight and nine years was indicted, and found guilty of burning two barns, and it appeared upon examination that he had malice, revenge, craft and cunning, he had judgment to be hanged, and was executed accordingly.*

An infant of the age of nine years, having killed

* Dean's Case, 1 Hale, 25.

an infant of the like age, confessed the fact; and upon examination, it was found that he had concealed the blood and body. The court held that he ought to be hanged, but respited the execution that he might have a pardon.* Another infant of the age of ten years, who had killed his companion and hid himself, was, however, actually hanged upon the ground that it appeared by his hiding that he could discern between good and evil.†

2. *Insanity* and *Idiocy*.— That one who is so afflicted by the dispensation of Providence as to be of unsound mind should be visited with punishment for the commission of an act at which, were his reason unclouded, he would probably recoil with horror, is a proposition unknown amongst civilized nations. Such persons, idiots from their birth, and consequently born with a defective understanding, or insane by reason of mental disease occurring in after life, are declared by the law to be irresponsible in like manner and upon the same principle as infants under seven: they are incapable of discerning between right and wrong—of judging between good and evil. Further, indeed, the law in its clemency says that even if a man of sound mind shall commit an offence, and before trial therefor become mad, he ought not to be put to plead, because he is not able to plead to it with that advice and caution that he ought. And if after he has pleaded he should become mad, he shall not be tried, for how can he make his defence? If, after he be tried and found guilty, he lose his senses before judgment, judgment shall not be pronounced; and if after judgment

* 1 Hale, 27. † Spigurnal's Case, 1 Hale, 26.

he become of nonsane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution.*

The principle of the law on this subject is thus expressed by a very high authority on Scottish law, Mr. Alison, who says—"To amount to a complete bar of punishment, either at the time of committing the offence, or of the trial, the insanity must have been of such a kind as entirely to deprive the prisoner of the use of reason, *as applied to the act in question*, and the knowledge that he was doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong, in *his own case*, and to know that he was doing wrong in the act which he committed, he is liable to the full punishment of his criminal acts."

You may probably remember the trial of a man named *McNaughten*, several years since, for shooting Mr. Drummond. The prisoner was acquitted on the ground of insanity; and as the subject about that time underwent much discussion, the House of Lords, with a view to obtaining a solemn opinion as to the state of the law on so important a question, propounded several questions thereon to her Majesty's judges. In delivering the opinion of all the judges of England with the exception of the late Mr. Justice MAULE, the Lord Chief Justice TINDAL said:—"Your lordships are pleased to inquire of us, secondly, 'What are the proper questions to be submitted to the jury, when a person alleged to

* Hale's Pleas of the Crown, 34.

be afflicted with insane delusion respecting one or more particular subjects or persons is charged with a crime (murder, for example), and insanity is set up as a defence?' And, thirdly, 'In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?' And as these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved, that at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

It only remains for me to remark, that intoxication is no excuse for the commission of crime. If, therefore, a man choose to madden himself with drink, and thus wilfully deprive himself of his reason, he ought not (as is justly said by Paris and Fonblanque, in their very able and interesting work on Medical Jurisprudence) "to be excused one crime by the voluntary perpetration of another." "But if," says Hale, "by the long practice of intoxication, an habitual or *fixed insanity* is caused, although this madness was contracted voluntarily, yet the party is in the same situation with regard to crimes as

if it had been contracted involuntarily at first, and is not punishable."

So much for the general principle upon which the law exempts persons of unsound mind from punishment. To enter further into this subject would not only be foreign to my purpose, but be quite impossible within the prescribed limits of this treatise.

3. *Subjection to the Power of Others.*—You have already seen that the ground upon which the law holds a man responsible for his acts is that he is a free agent, and as such does some act in violation of law, of his own free and uncontrolled will. This being so, you will recognise the wisdom and justice of the rule which exempts from penal consequences those who do unlawful acts by compulsion, or under the irresistible influence of others. Blackstone has very forcibly said, "As punishments are only inflicted for the abuse of that free will which God has given to man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force and compulsion." Thus if a child, not old enough to be aware of the distinction between right and wrong, or an idiot, be made the mere tool of another, and so do an unlawful act, either would be properly regarded as an innocent agent, and the person by whose direction the act was done be the only one responsible. In private relations, the principal case in which we find one acting under the compulsion or influence of another in such a way as to be excusable in point of law, is that where a wife acts under the control of her husband. Neither

child nor servant is excusable under similar circumstances to those which the law permits, in its clemency, to be regarded as a legal excuse for a wife. But as regards a *wife*, it is said she "is so much favored in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft or even a burglary by the coercion of her husband, or in his company, which the law construes to be coercion. But this is only the presumption of law; so that if upon the evidence it clearly appear that the wife was not drawn to the offence by her husband, but that she was a principal actor in and inciter of it, she is guilty as well as the husband."* In fact, so clearly must it be shown that the wife acted under the immediate control of her husband, that in the case of one *Sarah Morris*, who was charged with passing off a forged document, it appeared that she did so indeed by the order of her husband; but inasmuch as he was not present when she passed it away, she was convicted, and the judges afterwards considered the case, and pronounced their judgment, that as the husband was absent at the time the wife did the act complained of, she was not excusable on the ground that she acted under the coercion of her husband.

But it must not be inferred that a woman is protected from penal consequences by reason of the coercion of her husband in all cases. For in offences of a heinous nature, such as treason, murder, and according to some authorities robbery, and offences committed with violence, a wife is as liable to

* Greaves' Edition of Russell on Crimes, 20.

punishment as her husband; for those are offences at the commission of which it may reasonably be supposed the natural feelings of woman would revolt, and that, unless actuated by as corrupt and cruel intention as himself, no matter how much under the influence of her husband, she would refuse to aid him in the commission of such crimes.

And in offences relating to domestic matters and the government of the house, in which the wife may be supposed to have a principal share, the rule with regard to coercion does not exist, as upon an indictment for keeping a disorderly house,* or gaming house. And the prevailing opinion is said to be that a wife may be found guilty with her husband in all *misdemeanors;* but this can hardly be accepted without some qualification, as much depends upon the precise nature of the offence.

4. *Ignorance.*—It will be quite unnecessary that I should say more upon this head than that if a man do an act, however unfortunate in its consequences, in mere error or ignorance, he cannot be said to be guilty of an offence. But you must not for an instant suppose that ignorance of *law* will excuse any man, for every one is presumed to know it, and no allegation of ignorance in this respect will in anywise avail. The most familiar illustration of the rule under consideration is that of the case where a person, supposing that burglars are in his house, shoot, as he believes, at them, but in truth the persons whom he mistakes for burglars are his own household. He discharged the gun in ignorance as to who were the persons in his house. His killing

* Hawkins' Pleas of the Crown, b. 1, c. i. s. 12.

one of them, however lamentable, is but a misfortune.

Persons charged with the commission of offences are usually prosecuted by indictment presented by a grand jury, and from this fact transgressions of the criminal law are commonly styled *indictable offences*, and these are divided into *felonies* and *misdemeanors*:—terms of very little practical importance, and used generally to distinguish very heinous offences from those of a milder character. Sir William Russell, in his valuable work on Crimes, which has been reproduced by a very learned writer, Mr. Greaves, says—"The term *felony* appears to have been long used to signify the degree or class of crime committed, rather than the penal consequence of forfeiture occasioned by the crime, according to its original signification. The proper definition of it, however, as stated by an excellent writer, recurs to the subject of forfeiture, and describes the word *as signifying an offence which occasions a total forfeiture of either lands or goods, or both*, at the common law; and to which capital or other punishment may be superadded, according to the degree of guilt. Capital punishment does by no means enter into the true definition of felony; but the idea of felony is so generally connected with that of capital punishment, that it is hard to separate them."

"Misdemeanor," says the same learned author, "in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished, according to the degree of the offence, by fine, or imprisonment, or both. A misdemeanor is, in

truth, any crime less than felony, and the word generally used in contradistinction to felony; misdemeanors comprehending all indictable offences which do not amount to felony," as cheating, obtaining property by false pretences, perjury, conspiracy, misprision—*i.e.*, the mere concealment, or procuring the concealment of a felony—and public nuisances. In misdemeanor, no forfeiture of property follows the conviction of the accused: in felony, the moment his guilt is recorded in court, all his goods become forfeited to the Queen, and their disposition, either by grant to the relations of the felon (as he is then called), or to any other person, is entirely in the discretion of the advisers of her Majesty. In certain cases the court is empowered by act of parliament to order the restitution of stolen property to the person from whom it is stolen.

The *Grand Jury*, to which I have just adverted, is an institution of great antiquity, composed of persons chosen indifferently by the sheriff from the freeholders, gentry, and merchants of the county. Its number must exceed twelve, and may not exceed twenty-three. The duty of the grand jury is to present to the court what are termed bills of indictment against all persons of whom they shall have such information on oath as shall cause them to believe they ought to be put on their trials for the commission of offences: and they may present a bill upon merely their own knowledge. Although the number of the grand jury may be as many as twenty-three, twelve, and not less, may present a bill of indictment. No man can be put upon his trial in this country unless the grand

jury shall "find," as it is called, a *true* bill against him.* Thus, if they shall be of opinion that the charge embodied in any bill of indictment laid before them is unfounded, or that the evidence is so weak that it would be a hardship to subject the person to the pain and ignominy of a public trial, they declare in open court that the bill is "*not found,*" which is a contraction of that which would be a long statement, to the effect that, after investigating the matter, the grand jury did not find any sufficient ground for the accusation contained in the bill. On the other hand, if they are satisfied that the charge is well founded, they pronounce in open court that the bill is true, or in other words the accusation so well founded that the accused party ought to be tried for the offence imputed to him. In bygone times the grand jury was an institution of much value. It was a safeguard against groundless charges, originated for malicious or political ends. In those days the very magistracy were often venal and corrupt, and too ready to lend themselves to the basest purposes of the party in power. The grand jury was in those times a blessing and a boon. But its utility in the nineteenth century is, in the opinion of many, very questionable. The institution as it exists at present, I have shortly described to you; whether, at the present day, it serves to facilitate or impede the administration of the criminal law, is a question with the discussion of which in this place we have nothing to do.

* Except upon a Coroner's Inquisition, or a "Criminal Information" filed in the Court of Queen's Bench in the name of the Attorney-General—a proceeding rarely resorted to.

In considering the offences of which we are about to treat—and, indeed, in reference to commercial transactions in general—it will be well that you keep always in view a most important legal axiom, tersely expressed by the late Mr. Baron Wood, "A parting with the PROPERTY in goods can only be effected by CONTRACT, which requires the assent of two minds,"* *i.e.*, the assent of the owner as well as that of him who proposes to become the owner. If, therefore, a person part with his goods merely on *trust*, or for a specific object, or on a special understanding that they shall be returned if certain conditions be not complied with, such parting is a parting of *possession* only, and not of the *property* in them. The importance of this will be more apparent hereafter.

I would just observe, in relation to the recent statute for the punishment of fraudulent bankers, trustees, &c., that until very recently, except under special circumstances, the criminal law did not reach persons guilty of the fraudulent misappropriation of property entrusted to them for special purposes or for safe keeping: hence instances of flagrant fraud, accompanied by circumstances of cruel aggravation, wherein the perpetrator went unpunished by reason of the defective state of the law, have been of frequent occurrence, although the wrong inflicted has been very severe, and the moral guilt of the parties beyond all question. Happily this state of things no longer exists, and the man to whom property is entrusted and who violates that trust by fraudulently converting such property to his own use, is as clearly punishable as a footpad or a burglar.

* The King against Oliver, 2 Leach's Reports, p. 1072.

Until a comparatively recent period, persons charged with the commission of offences frequently escaped punishment altogether, by reason of a failure of proof that the offence charged was actually completed. Under such circumstances, although entertaining no moral doubt of the guilt—at least of an *attempt* to commit the crime in question—juries have had no alternative but to acquit the accused; the ends of justice being thus entirely defeated.

To the present Chief Justice of England, Lord CAMPBELL, the public are deeply indebted for many statutes by which the administration of the law, civil and criminal, has been facilitated; and amongst others, for that by which juries are now enabled to convict persons of *attempts* to commit crimes, when the evidence fails to substantiate the complete commission of the offence.

Having now called your attention to a few of the elementary principles upon which our criminal code is founded, I shall proceed to consider, in separate chapters, the offences most closely connected with the mercantile and trading community.

## CHAPTER II.

**OF LARCENY, OR THEFT.—WHAT PROPERTY MAY BE THE SUBJECT OF THEFT.—DEFINITION OF LARCENY.—DISTINCTION BETWEEN STEALING AND CHEATING.—ILLUSTRATIVE CASES.**

If your property be taken feloniously, you are very likely to say, "I have been robbed." Substantially this is so; but that the application of the term *robbery* is correct depends entirely upon circumstances. "Robbery" is a word applied indiscriminately and erroneously to every unlawful abstraction of property.*

A highwayman knocks you down and rifles your pockets; a clever thief, without your knowledge, abstracts your watch; a person breaks open your house in the night, or enters your premises in the daytime, and in either case takes your goods; a cunning fellow by some clever trick obtains the mere possession of your property, and makes off with it; your clerk or servant, having the lawful possession of your goods, wrongfully appropriates them to his own use: in each case you would most probably say, "I have been robbed." No doubt, in a popular view of the matter, the expression is correct enough. But not so legally: in the first case the offence is, in law, highway robbery, and

* Legally defined to be a "felonious taking of property from the person of another (or in his presence against his will) by violence or putting him in fear." East P.C. 707.

punishable with transportation or penal servitude; in the second, it is larceny from the person, and not punishable so severely as robbery; the third is what the law terms burglary, and being a very serious offence,—entering one's house in the night,—is punishable with very great severity—a few years ago with death. The fourth is called larceny from the dwelling-house; the fifth is simple larceny; and the last is termed larceny by a servant; each being punishable by penal servitude, or imprisonment with hard labour, in the discretion of the judge. So you see that the term *robbery* is applicable, in legal strictness, only where you are put in bodily fear, and your property taken from your person by violence, or in your presence against your will.

It is not my intention to dwell upon these offences, further than is necessary to prepare your mind for the consideration of that which is more likely to concern you, and which will form the subject of subsequent chapters; and, at the same time, afford you such general knowledge as must be acceptable to every one desirous to be well informed on ordinary matters.

As the foundation of our inquiries, larceny, or theft, claims our special consideration: let us first ascertain—

### WHAT PROPERTY MAY BE THE SUBJECT OF THEFT.

The above heading may startle you. Under the very natural impression that almost everything, except houses, land, air, and water, may be wrongfully taken and carried away, you probably ask yourself, "What else is *not* the subject of theft?" Thanks to modern legislation, the criminal law now reaches

almost every fraudulent misappropriation by one person of the moveable property of another, of what kind soever. The only important exceptions still being in respect of animals that are wild by nature, and *unreclaimed*, and in which there is no property, such as deer, hares, or conies in a forest, chase, or warren, fish in an open river or pond, or wild fowl at their natural liberty. But it was not so in the days of our forefathers: and although my special design is to lay before you only such information as may be of practical utility, yet where the history of the course of legislation on a particular subject is replete with interest even to the popular reader, as I conceive it is here, I shall give you a very short sketch of it, even at the risk of trespassing on my prescribed space.

According to the old, or *common law*, as it is termed, by which is meant the law as it existed in the early ages, and exists still, as distinguished from statute law, or that created by Acts of Parliament, *personal goods only* were the subject of larceny; nothing, therefore, which was annexed, or adhering to, the land could be made the subject of theft. Thus, if a man cut down trees, or plucked fruit, or pulled down the bricks or stones of buildings or bridges, or the fixtures of a house, or coals, minerals in the earth, &c., and instantly carried them away, he could not have been convicted of stealing; because such property is part and parcel of the freehold; but if once severed, and allowed to lie on the ground for some period of time, before being carried away, they then became personal goods, and the subsequent wrongful carrying away was larceny. So strict was the law relating to land (or the *realty*,

as it is called in law), that it was held that larceny could not be committed of the title-deeds to the land, or even of the box in which they were contained! So, written documents, such as bonds, bills of exchange, promissory notes, &c., were not, as such, the subject of theft, on the supposed ground that, as they were mere evidences of debt, they were of no intrinsic value: neither was the wrongful taking of a corpse, on the principle that it is not and cannot be the *property* of any one, and of course no statute could make such an act, however revolting, *larceny*, because the very essence of larceny is the taking of *property;* but to disinter and wrongfully remove a dead body for corrupt purposes is a misdemeanor of a high class, and punishable by imprisonment or fine.

With regard to the wrongful taking of property annexed to land, as trees, fruit, minerals, fixtures, and also deeds, bills, bonds, wills, and other written instruments, and animals originally wild by nature, but reclaimed, the Legislature from time to time passed statutes, most of which were consolidated by the late Sir Robert Peel into one, making all these acts felonies or misdemeanors, according to their respective gravity.*

In the next place, you should understand the

* By 7 and 8 Geo. 4, c. 29, sec. 38, it is enacted, "that if any person shall steal [or shall cut, break, root up, or otherwise destroy or damage, with intent to steal], the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound), shall be guilty of felony, and being convicted thereof

meaning of the legal word "LARCENY." It would be out of place here to discuss its derivation. Some refer it to the French *larcin*, theft, others to the Latin *latro*, a thief, and *latrocinium*; but it is clear that the latter reference can be well founded only upon the ground that the original term latrociny,

shall be liable to be punished in the same manner as in the case of simple larceny," &c. For taking, or cutting with intent to steal, trees, &c., under the value of one pound, the offender may be summarily punished by a magistrate.

By sec. 44. "If any person shall steal [or rip, or cut, or break, with intent to steal] any glass, or woodwork, belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal, or other material, respectively fixed in, or to any building whatsoever, or anything made of metal, fixed in any land, being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

By sec. 4. "If any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money, or for payment of money, whether of this kingdom or of any foreign state, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony," &c.

By sec. 37, stealing coal, ore, minerals, &c., from mines, is made felony.

By sec. 22. "If any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or, for any fraudulent purpose, destroy or conceal, any *will, codicil, or other*

the English of latrocinium, has been, from time to time, shorn of its fair proportions, until at length latrociny was contracted to *larceny*. However that may be, our purpose is to inquire what the term, as used by lawyers, really implies. Of all the definitions, and they are many, which legal writers have given,

*testamentary instrument*, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable," &c.

With reference to beasts, birds, dogs, and other animals not the subject of theft at common law, various Acts of Parliament have been passed, making the fraudulent taking of such misdemeanor, and as great interest is felt in the protection of dogs, and the punishment of dog-stealers, I subjoin the more important sections of the statute passed in the 8th year of her present majesty's reign.

By the 8 Vict. c. 47, s. 2, it is enacted "that if any person shall steal any dog, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof before any *two* or more *justices* of the peace, shall for the first offence, at the discretion of the said justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or shall forfeit and pay, over and above the value of the said dog, such sum of money, not exceeding twenty pounds, as to the said justices shall seem meet; *and if any person* SO CONVICTED *shall afterwards be guilty of the said offence*, every such offender shall be guilty of an *indictable misdemeanor*, and being convicted thereof, shall be liable to such punishment, by fine or imprisonment, with or without hard labour, or by both, as the court in its discretion shall award, provided such imprisonment do not exceed eighteen months."

By s. 3. "If any dog, or the skin thereof, shall be found in the possession or on the premises of any person, the justice may restore the same to the owner thereof, and the person in whose

I select for you that of a late learned judge, Mr. Justice GROSE, pronounced when delivering the judgment of the twelve judges of England in a case which had been reserved for their solemn consideration. The true meaning of larceny, said the judge, is "the felonious taking the property of another without his consent and against his will, with intent to convert it to the use of the taker."*

Certain elements, or, so to speak, ingredients, con-

possession or on whose premises the same shall be found, such person (knowing the dog has been stolen, or that the skin is the skin of a stolen dog) shall, on conviction before two or more justices of the peace, be liable for the first offence to pay such sum of money, not exceeding twenty pounds, as to the justices shall seem meet; and if any person so convicted shall be *afterwards guilty of the said offence*, every such offender shall be deemed guilty of a *misdemeanor*, and punishable accordingly."

By s. 4. "If any person shall publicly advertise or offer a reward for the return or recovery of any dog which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any dog which shall have been stolen or lost without seizing or making any inquiry after the person producing such dog, every such person shall forfeit the sum of twenty-five pounds for such offence to any person who shall sue for the same, by action of debt, to be recovered with full costs of suit."

S. 5 provides for the apprehension of the offender without warrant by a police officer, or the owner of the dog.

By s. 6. "Any person who shall corruptly take any money or reward directly or indirectly under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a *misdemeanor*, and punishable accordingly."

* The King against Hammond, 2 Leach, 1089.

stitute each offence known to our laws, and unless we possess a clear conception of each ingredient, it is utterly impossible that we can form anything like an accurate opinion as to whether certain acts and facts do or do not amount to an offence. The absence or insufficiency of any one vitiates the whole. The ingredients of larceny are—

1. A felonious taking.

2. Without the consent and against the will of the owner.

3. With an intent on the part of the taker to convert the property to his own use.

Let us now consider each ingredient, and—

### I.—WHAT IS A FELONIOUS TAKING?

A few years ago the then Government appointed certain learned persons to examine into the state of the criminal law, with a view to its amendment; and in their very elaborate and able report, while upon this subject, they say:—"The taking and carrying away [of one's property] are felonious, where the goods are taken against the will of the owner, either in his absence or in a clandestine manner; or where possession is obtained by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods; and where the taker intends in any such case fraudulently to deprive the owner of his entire interest in the property against his will."* It must be more than such a taking as will amount to a mere private wrong to the owner—as where one lays claim to another's goods, however wrongfully, and so, under a belief of

* 1st Report of C.L.C. p. 16.

right, for which there may turn out no real justification, takes possession of them, the *taking* must be *felonious** —that is, without any fair claim of right. Of this more by-and-bye.†

In reference to the *taking*, and as to what constitutes the *taking*, the law says there must be an entire and complete separation of the thing from the possession of the owner, and an entire possession by the taker—the possession here referred to not being necessarily a manual possession, as money in your pocket or a hat upon your head: property lawfully yours, whether in your hands or on your premises, or in the hands of another—for example, your clerk or servant—on your behalf, is in your own possession within the meaning of the law. And although the taking out of your possession must be complete, yet the least removal of the thing from the place in which it was—even to the extent of one inch—for one second of time, is a sufficient *taking*. A person of the name of *Walsh* got upon the box of a stage-coach, and

* *Felony* has already been defined, see p. 13. *Felonious* is a term which has crept into use to signify a corrupt state of mind, and must be adhered to, although its application should be more correctly confined to the nature of the offence. It has been recently explained to mean, that there is no color of right to excuse the act.—*Arch. Cr. Plead.* 274.

† It would be inconvenient to interrupt the discussion of larceny at common law, by introducing above the observation that this rule as to "felonious taking" must now be accepted with some qualification, in consequence of very recent legislation, to which we shall presently advert, and which makes the fraudulent misappropriation of property felony, although at the time of *taking* the taker had no felonious intention. The above rule is one of common law: and, as such, is in full force and effect.

laid hold of the upper end of a bag, which was lying in the boot, and lifted it up some distance from the bottom, for the purpose of taking it away and stealing it. While endeavouring to pull it out, the guard of the coach seized him, and he was tried for stealing this bag; and the question arose whether, as the bag was not taken quite out of the boot, but merely removed from the spot on which it lay, there was a sufficient *taking* to constitute larceny. The opinion of the judges was taken, and they held that as the bag had been entirely removed from the spot on which it rested—each part from that part of the boot which it had occupied, the taking was complete, and the conviction by the jury correct.* Upon the same principle, one *Coslet* was convicted of stealing a parcel which was lying in a wagon into which he got. The parcel was lying in the front part, and the prisoner dragged it to the tail of the wagon, intending to carry it off, but was detected before he could do so.† There is an old case reported of a man who took the sheets off his bed, and carried them into the hall, intending to carry them away with him; but before he could get out of the door he was stopped, and his intention to steal being manifest, he was convicted, the court holding that the *taking* was sufficient. A very curious case still more strongly illustrates this point. A lady was coming out of the Opera-house, when a thief snatched at her diamond earring, and tore it completely from her ear, causing it to bleed. Upon her return home,

* The King against Walsh; Ryan and Moody's Crown Cases Reserved, 14.

† King against Coslet, 2 East's "Pleas of the Crown," 556.

she found the ring lying in the tresses of her hair. The man was tried for stealing this ring, and being found guilty by the jury, the opinion of the judges was taken whether this could be considered a sufficient *taking*: the opinion of the judges was afterwards delivered, in which they held, that as the ring had been entirely removed from the lady's ear, and was wholly in the possession of the prisoner, although but for an instant of time, when he lost it in her hair, the *taking* was complete.* So, where a thief led a horse from one part of a field to another, intending to steal it, but was apprehended before he could get the horse out of the field, it was decided the taking was complete.†

In all these cases you will have noticed the principle upon which they were decided is that the property must be completely severed from the possession of the owner, and entirely within the possession of the taker, no matter, in each case, for how short a period of time. Two or three cases showing what is *not* a sufficient taking, and we will then proceed to consider another branch of the subject. One *Wilkinson* put his hand into the pocket of another, seized his purse, and actually succeeded in taking it out of his pocket. However, the purse being tied by a piece of string to a bunch of keys which still remained in the person's pocket, the thief was unable to complete his object, and was arrested and tried for stealing the purse; but it was held that as the purse was still attached to the pocket of the owner by the string and keys, it was still in his possession, and the prisoner

* King against Lapier, 1 Leach, 320.
† 3 Inst. 109.

was entitled to be acquitted.* So, where a thief went into a shop, took up some goods intending to steal them, but before he had removed them far from the spot on which they lay, discovered they were tied to the counter by a cord, upon being tried for stealing, it was held that the property never was either completely severed from the possession of the owner, nor completely in the possession of the prisoner, and he was acquitted.†

### II.—WITHOUT THE CONSENT AND AGAINST THE WILL OF THE OWNER.

The *taking* may be otherwise than by forcible abstraction against the will of the owner; as where one with an intention to steal induces you by means of some artful device or trick to part with the mere

* King against Wilkinson, 1 Hale, 508.

† These prisoners went free men from the dock of the court, because declared not guilty of stealing; but by a recent Act of Parliament, of a very salutary nature, for which the public is indebted to the Lord Chief Justice of England, Lord CAMPBELL, persons under similar circumstances may now be convicted of the *attempt* to commit an offence when the evidence fails to establish the full charge. "Whereas" [14 and 15 Vict. c. 100, sec. 9] "offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof, for remedy thereof be it enacted, that if, on the trial of any person charged with any felony or misdemeanour, it shall appear to the jury upon the evidence that the defendant did not *complete* the offence charged, but that he was guilty only of an *attempt to commit* the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished," &c.

temporary possession of your goods, you not for a moment meaning to divest yourself of your ownership. This is technically denominated a "constructive taking." In the next chapter I shall have to direct your attention to the subject of cheating and obtaining goods by false pretences, and you will then perceive the importance of well understanding the point we are at present considering; for the main distinction between *stealing* and *cheating* is that in the former case you never intended to divest yourself of your ownership; in the latter you did, and, on the faith of some statement or pretence, wholly and entirely dispossessed yourself of your property, and transferred it to another as completely as when you sell your goods and receive the value therefor.

Although we shall have hereafter to discuss this matter at some length, I am anxious you should keep it in view while considering what is larceny or stealing, for the purpose of facilitating our subsequent inquiries. What constitutes a taking such as I have just indicated will be more clearly manifest by reference to a few reported cases.

One *Oliver* proposed to give a tradesman gold for bank notes, and upon the tradesman laying down some bank notes for the purpose of having them changed for gold, *Oliver* took them up and went away with them, promising to return immediately with the gold, but in fact never did return. The judge left it to the jury to say whether the prisoner had the intention, at the time he took the notes, to steal them, for if they were of that opinion, the case clearly amounted to larceny.*

* King against Oliver, 2 Leach, 1072.

A man of the name of *Aickles* agreed to discount a bill for the prosecutor, and the bill was given to him for that purpose; he told the prosecutor that if he then sent a person with him to his lodgings, he would give him the amount, deducting the discount and commission; a person was sent accordingly, but, upon reaching the lodgings, the defendant left the messenger there, and went out on pretence of getting the money, but never returned: the judge left it to the jury to say whether *Aickles* obtained possession of the bill with intent to steal it, and whether the prosecutor meant to part with his property in the bill before he should have received the money for it; the jury being of opinion that *Aickles* intended to steal the bill at the moment he got it into his possession, and further, that the prosecutor never meant to part with his property in the bill until he should receive the money for it, convicted the prisoner, and the judges afterwards held the conviction to be right.* Where one *Davenport* obtained from a silversmith two cream-ewers, in order that a customer of the silversmith, with whom the prisoner said he lived, might select which he liked best, and absconded with them, but the silversmith did not charge for either of the ewers, and did not at the time of the delivery intend to charge for either of them until he had ascertained which would be chosen, this was holden to be larceny, because the *possession* only, and not *the right of property*, had been parted with.† So, where *Campbell* prevailed upon a tradesman to take goods to a particular

* King against Aickles, 2 East, 675.

† Davenport's Case, cited in Arch. C. P. 279.

place, under pretence that the price would then be paid for them, and afterwards induced him to leave the goods in the care of a third person, from whom the defendant got the goods without paying the price; the tradesman swore that *he did not intend to part with the goods until they were paid for*, and the jury found that the defendant intended, from the very beginning, to get the goods without paying for them, this was holden to be larceny.* So, where one *Small* induced a tradesman to send his goods by a servant to a particular place, with change for a crown piece, and on the way met the servant, and giving him a counterfeit crown piece, induced him to part with the goods and change, which he had no authority to do without receiving payment; this was holden to be larceny.† Where *Gilbert* having bargained for goods, for which, by the custom of trade, the price should have been paid before they were taken away, took them away without paying and without the consent of the owner, not intending to pay for them, but meaning to get them into his own possession, and dispose of them for his own benefit; this was holden to be larceny.‡ And where the prisoner, intending to get goods by fraud, had them put into his cart upon the express condition that they should be paid for before they were taken out of it, and then took them out of the cart without paying for them, and converted them to his own use, this was

* Campbell's Case, 11 M.C.C. 179.
† King against Small, 8 Car. and Payne's Rep. 46.
‡ Gilbert's Case, 1 M.C.C. 185.

holden to be larceny.* So, obtaining money or goods by the practice of *ring dropping* (as it is termed), has been holden to be larceny. Thus, where the prisoner, in the presence of the prosecutor, picked up a purse in the street, containing a receipt for 147*l.* for a "*rich brilliant diamond ring*," and also the ring itself; it was then proposed that the ring should be given to the prosecutor, upon his depositing his watch and some money as a security that he would return the ring as soon as his proportion of the value of it should be paid to him by the defendant; the prosecutor accordingly deposited his watch and money, which were taken away by some of the defendant's confederates; the ring turned out to be of the value of 10*s.* only, and the watch and money were never returned; it was left to the jury to say whether this was not an artful and preconcerted scheme to get possession of the prosecutor's watch and money; and the jury being of that opinion, convicted the defendant.† So, where the prosecutor was induced, by a preconcerted plan, to deposit his money with one of the prisoners, as a deposit upon a pretended bet, and the stakeholder afterwards, upon pretence that one of his confederates had won the wager, handed the money over to him; it was left to the jury to say whether, at the time the money was taken, there was not a plan that it should be kept, under the false color of winning the bet, and the jury found that there was—this was held to be larceny; because, at the time the defendants obtained the money from the prosecutor, he parted with

* Pratt's Case, 1 M.C.C. 250.

† King against Patch, 1 Leach, 238.

the *possession* only, and the *property* was to pass eventually, *only if the other party really won the wager*.* Where the prisoner went into a shop and asked for change for half-a-crown, and the shopman gave him two shillings and sixpence, the prisoner held out the half-crown, and the shopman just took hold of it by the edge, but never actually got it into his custody, and the prisoner ran away with the change and the half-crown; upon an indictment for stealing the two shillings and sixpence, the judge, the late Mr. Justice PARK, held it to be larceny.† Where a hosier, by the desire of the prisoner, took a parcel of silk stockings to his lodgings, out of which the prisoner chose six pairs, which were laid on the back of a chair; the prisoner then sent the prosecutor back to his shop for some articles, and while he was absent, absconded with the stockings; the judges held that this amounted to larceny, the prisoner having clearly obtained possession of the goods with intent to steal, the prosecutor not meaning to part with his *property* in them till he should receive his money.‡

Clerks and servants have the lawful possession of their employer's property, but the *possession* or custody only, the legal ownership of the employer being precisely the same with reference to a servant as to a perfect stranger. Hence, if a servant fraudulently appropriate to his own use, or sell, or give away, his master's goods, this is a *taking*, and he is guilty of larceny in an aggravated form, for the law

* King against Robson, Russell and Ryan, 413.
† King against Williams, 6 Car. and Payne, 390.
‡ King against Sharpless, 2 E.P.C. 675.

says that he who, being in his master's confidence, betrays the trust reposed in him, shall be punished more severely than one who stands in no such relation.

The abuse of legal process may be made the instrument whereby a larcenous *taking* of property may be effected. I am not clear that there is any well-reported case of this kind, but Lord HALE and Mr. Greaves have treated it as if it had occurred and might occur again. That the law might be so perverted to a felonious purpose is beyond doubt, for Lord HALE has laid it down that if A. has a design to steal the horse of B., and enters a plaint of replevin in the sheriff's court for the horse, and so gets him delivered to him and rides him away, this is a taking and stealing, because done in fraud of the law. So where A. having a mind privately to get the goods of B. into his possession, brings an ejectment and obtains judgment against the casual ejector, and thereby gets into possession, and takes the goods, if it be done with an intent by those means to steal the goods, it is larceny.*

There are numerous cases reported in which property was obtained by pretended purchases, and hiring, such as hiring of horses, carriages, musical instruments, furniture, &c., and in which the decisions have been precisely the same as in the cases quoted, the simple tests being in every case first, was the prisoner actuated by a felonious intent when he obtained the property; and, secondly, did the owner part with the *possession* merely, or with his *entire ownership* in the goods.†

* 1 Hale, P. C. 507, 2 Russ. by Greaves, 54.

† See note page 26.

Apply these tests to any state of facts which may arise in your own experience, and you cannot very well fail to arrive at a correct solution of the question, ay or no, do they constitute a larceny. And here let me observe that, in one sense, tradesmen are scarcely fit subjects for sympathy when deprived of their property by schemes such as those disclosed in the foregoing cases, inasmuch as ordinary caution, and very slight trouble, would serve to detect any such attempted fraud. I am afraid the fact is, in this age of competition, tradesmen are too fearful lest they should lose a customer by being inquisitive as to his respectability, or into the truth of his statements; but surely far better occasionally suffer such a loss, than in the over-anxiety to sell goods fall into the trap of a skilful thief.

In a subsequent chapter I shall bring to your notice a new and most important Act of Parliament,* by which many of the heretofore existing difficulties, not to say absurd anomalies, in the law relating to larceny have been entirely swept away. I thus incidentally make mention of the Act in this place, as had it not been in existence, I should have been obliged to occupy your time by noticing points which, in the amended state of the law, happily for the interests of society, are no longer of importance. Previously to this enactment, the criminal law did not reach a person to whom property is intrusted for special purposes, such as goods to be repaired, to be taken care of, to be conveyed, as by carriers, &c., and who subse-

* "The Fraudulent Trustees' Act," 20 and 21 Vict. c. 54.

quently, in violation of good faith, fraudulently converted it to his own use, unless he did an act which was termed "breaking bulk," a legal sophism of our ancestors which, I trust, will soon be numbered with other curiosities of the past. We shall presently consider the provisions of the statute to which I refer, and which renders such persons liable to the punishment of felons.

The most extraordinary circumstances under which a person may be adjudged guilty of a larcenous *taking*, are those where goods which have been lost are found and appropriated by the finder to his own use. This branch of the subject has given rise to very learned discussions in our courts of criminal judicature, and the inquiry is by no means uninteresting. At first blush, one might think it strange and even harsh that a person having come into the possession of property to all appearance innocently, so to say, as by finding it on the highway, should under any circumstances be liable to a criminal prosecution. But upon slight reflection you will perceive that the law relative to this matter is neither harsh nor inconsistent with the soundest principles of justice. In cases of finding property lost, or supposed to be lost, the solution of the question larceny or no larceny all turns upon the point we have been considering at so much length—what was the *intention* of the finder at the time of finding? If the property found bear upon it marks by which the owner can be discovered, or the finder knows to whom it belongs, and upon finding, notwithstanding these facilities for restoring, he keep it with intention to appropriate it to his own use,

he is clearly guilty of larceny. But, on the other hand, if the goods bear no mark indicative of, and the finder has no knowledge as to who is, the owner, and believes that he cannot be discovered, and with his mind in this state, appropriates them to his own use, he is not guilty of larceny, even though the owner be subsequently made known to him. A man of the name of *Thurborn* found a bank-note which had been accidentally dropped. There was neither name nor mark upon it indicating the owner, nor was he aware at the time of any means whereby the owner could be discovered. Upon finding it he at once resolved to appropriate it to his own use. The next day, before he changed the note, he was told who was the owner, but notwithstanding this information, he procured change for it, and used the money. Upon this state of facts *Thurborn* was arrested, and subsequently tried for, and found guilty of, larceny, but this verdict was set aside, or quashed as it is termed, by the Court of Criminal Appeal, to which the case was sent for consideration. The ground upon which the conviction was reversed was, that the *original taking* was innocent: if the prisoner had known, or had the means of ascertaining, to whom the note belonged at the time of finding it, the case would have been different, but as his original possession was untainted, the Court was of opinion his subsequent appropriation, although with knowledge of the owner, was not felonious.* You may probably, as a man of plain common sense, take exception to this decision, and think that if the

* The Queen against Thurborn, 1 Den. C.C.R. 387.

prisoner's misappropriation, with a knowledge of the owner at the time of finding, would have been felony, so it ought to have been on the next day, seeing that the information as to the name of the loser was conveyed to him before he appropriated the money to his own use. This may form a nice point for moralists and casuists to discuss, but upon those clear and well-defined principles of law by which our judges are guided, the decision must be regarded as safe and sound, and may now be considered as pretty well settling points which, theretofore, gave rise to frequent discussions. It has since been acted upon and recognised in many cases, amongst which were those of *Preston* and *Dixon*.* In the latter case, the lost notes were without any mark or name on them, and it was held that although the prisoner might probably have successfully traced the notes, and so found the owner, he was not bound to do anything of the kind. The jury convicted him, but the Court of Criminal Appeal quashed the verdict.†

A rather curious case, wherein the question of what constitutes a felonious *taking* arose, was recently tried at Berwick-on-Tweed. A man named White was indicted for stealing five thousand cubic feet of gas belonging to the Berwick Gas Company. The prisoner so contrived to fix a pipe of his own as to cause the gas to rise to the burners without passing through the Company's meter, and thus, by burning a greater quantity of gas than he paid for, he defrauded the Company. The Court of Criminal Appeal decided that the prisoner by this contrivance felo-

* The Queen against Preston, 2 Den. C.C.R. 353.
† The Queen against Dixon, 25 L.J.M.C. 39.

niously *took* the gas, and therefore was properly convicted of larceny.*

You need not be told by me that a *wife* cannot be convicted of stealing her husband's property, inasmuch as she and her husband are but one person in the eye of the law, and she is joint owner with him of his goods. So, if she take her husband's goods, no matter how cruel and unjustifiable her conduct, and sell them or give them away to another, neither she nor the person to whom she so disposes of the goods, although he well know the facts, is amenable to the criminal law, except under circumstances to which I shall now call your attention.

If a wife commit adultery, and she jointly with the adulterer take her husband's goods, it seems the adulterer would be guilty of larceny; for he has no right to assume that the husband is a consenting party to such a proceeding. Two cases have been discussed, and decided very recently before the judges; and I shall lay an abstract of each before you, taken from Mr. Power's excellent edition of Roscoe's work on "Evidence in Criminal Cases."

One *Thompson* went away with prosecutor's wife, and they lived together at Birmingham as man and wife: they took with them from prosecutor's house several articles belonging to him, which were used in their house at Birmingham. The chairman of Quarter Sessions directed the jury to find the prisoner guilty, if they came to the conclusion either that the prisoner, going away with the prosecutor's wife for the purpose of an adulterous intercourse, was engaged jointly with her in taking the goods; or, secondly, that not

* The Queen against White, 1 Den. C.C.R. 203.

being a party to the original taking or removal, the prisoner, after arriving at Birmingham, appropriated any part of the goods to his own use. The jury found the prisoner guilty; adding that they did so on the ground that there was a joint taking by the prisoner and the prosecutor's wife; and the court were unanimously of opinion that the conviction was right.* In the other case, the prosecutor's wife had taken from his bed-room thirty-five sovereigns, and on leaving the house, called out to the prisoner, who was in a lower room of the house, "George, it's all right, come on." The prisoner left a few minutes afterwards, and he and the prosecutor's wife were traced to a public-house, where they passed the night together. When taken into custody, the prisoner had twenty-two sovereigns upon him. The jury found the prisoner guilty, stating that they did so "on the ground that he received the sovereigns from the wife, and that she took them without the authority of her husband." The court held that the conviction was right. "The general rule," said Lord CAMPBELL, in giving judgment, "is, that a wife cannot be convicted of larceny for stealing the goods of her husband. It is no larceny in her to carry away her husband's goods, as husband and wife are one. But the law has properly qualified that general rule, by saying, that if a wife commit adultery, and then steal the goods of her husband with the adulterer, she has determined her quality of wife, and is no longer looked upon as having property in the goods, and the person who assists her is guilty of larceny. I think the case of the prisoner must be considered in

* The Queen against Thompson, 1 Den. C.C.R. 549.

the same light as if he had taken the goods himself. This is not the case of a receiving of the goods from the wife, but the prisoner is supposed actually to have assisted her in taking them. It is said in 'Russell on Crimes,' p. 23, 'If the wife steal the goods of her husband, and deliver them to B., who, knowing it, carries them away—B. being the adulterer of the wife—this, according to a very good opinion, would be felony in B., for in such case no consent of the husband can be presumed.' That is this very case. The prisoner was the adulterer of the wife, and knew that the goods were carried away without the consent of the husband."*

In giving judgment on the subject of *taking*, one of the most learned and astute judges who ever adorned the English Bench, Mr. Baron PARKE, said "the taking should be not only wrongful and fraudulent, but should also be *without any color of right*."† "If," says Mr. EAST, in his work on the Pleas of the Crown, "there be any fair claim of property or right in the prisoner, or if it be brought into doubt at all, the court will direct an acquittal." One may take another's goods by mistake, by heedlessness or accident, as when the goods of one person get mixed up with those of another, or under such other circumstances as negative the presumption that the *intent* of the taker was *felonious*. Thus, where the owner of land takes a horse doing damage in his field, or it is seized as an estray, though perhaps without title, yet these circumstances explain the intent, and show that it was not felonious.‡ After

* The Queen against Featherstone, 1 Dears. C.C.R. 369.

† The Queen against Holloway, 1 Den. C.C.R. 375.

‡ 1 Hale, P. C. 507.

a seizure by excise officers of contraband goods, liable to be forfeited, several persons broke, at night, into the house where they were deposited, with intent to retake them for the benefit of the former owner:—it was held that this design rebutted the presumption of a felonious intent.* So, where a man was indicted for stealing a straw bonnet, and it appeared he entered the house where the bonnet was, through a window which had been left open, and took the bonnet, which belonged to a young girl with whom he was intimate, and carried it to a hay-mow of his own, where he and the girl had been twice before. The jury thought that the prisoner's intent was to induce the girl to go again to the hay-mow, but that he did not mean to deprive her of the bonnet. On a case reserved, the judges held that this taking was not felonious.†

Too great caution cannot be exercised in cases in which there is any room for doubting the criminal intent, before any one is subjected to the pain and ignominy of a prosecution. Indeed, it should always be remembered that where a charge of felony is rashly made, and without good grounds to show a fair and reasonable probability that he who is charged has committed an offence, the consequences, in the shape of an action for false imprisonment, are sometimes very serious.

As these pages may fall into the hands of persons engaged in agricultural pursuits, a few remarks on the subject of *gleaning* may be of utility. Mr. Roscoe says, "Whether the *taking of corn by gleaners* is to be regarded as a felony must depend upon

* The King against Knight, 2 E.P.C. 510.

† Dickenson's Case, R. and R. 420.

the circumstances of the particular case. In some places a custom authorising the practice of gleaning is said to exist: in others, it is sanctioned by the permission of the tenant of the land; and even where no right whatever exists, yet if the party carry away the corn under a mistaken idea of right, the act would not amount to larceny, the felonious intent being absent." Mr. WOODFALL, in his excellent work on Landlord and Tenant, makes these very useful remarks, "An idea very universally prevails among the lower classes of the community, that they have a right to glean, that is, to take from off the land the corn that remains thereon after the harvest has been gotten in; than which notion nothing can be more erroneous. By custom, indeed, such a right may possibly in some particular places exist; and the laudable kindness of tenants generally induces them to permit the poor to collect the corn they have left upon the land, and to appropriate it to their own use. As a right, however, it has no more existence than a right to take the tenant's furniture from out his messuage; and the pillage in the one case is as much felony as the plunder would be in the other; for the act is not simply a trespass, but a felony."* Mr. Woodfall tells us that he remembers a person being convicted at the Old Bailey for this offence. No doubt this is so, but I have not been able to discover the case reported anywhere: I sincerely hope no English landlord or farmer will ever be found instituting a similar prosecution.

This material ingredient in the offence of larceny underwent great consideration in a case, where the

* Woodfall's "Landlord and Tenant," p. 242.

following circumstances were given in evidence against *Egginton* and others upon an indictment for a burglary and larceny. It appeared that the prisoners, intending to rob a plated goods manufactory at Soho, near Birmingham, of which Mr. Boulton was the principal proprietor, applied to a man named Phillips, who was employed as servant and watchman to the manufactory, to assist them in the robbery. Phillips assented to their proposal, but immediately afterwards gave information to Mr. Boulton, and told him what was intended, and the manner and time the prisoners were to come: that they were to go into the counting-house, and that he was to open the door into the front yard for them. Mr. Boulton told him to carry on the business, and that he would bear him harmless; and Mr. Boulton also consented to his opening the door leading to the front yard, and to his being with the prisoners the whole time. In consequence of this information, Mr. Boulton removed from the counting-house everything but 150 guineas and some silver ingots, which he marked, in order to furnish evidence against the prisoners; and laid in wait to take them, when they should have accomplished their purpose. On the 23rd of December, about one o'clock in the morning, the prisoners came, and Phillips opened the door into the front yard, through which they went along the front of the building, and round into another yard behind it, called the middle yard; and from thence they and Phillips went through a door, which was left open, up a staircase in the centre building, leading to the counting-house and rooms where the plated business was carried on: this door prisoners bolted, and then

broke open the counting-house, which was locked, and the desks, which were also locked; and took from thence the ingots of silver and guineas. They then went to the story above, into a room where the plated business was carried on, and broke the door open, and took from thence a quantity of silver, and returned down stairs; when one of them unbolted the door at the bottom of the stairs which had been bolted on their going in, and went into the middle yard, where all (except one who escaped) were taken by the persons placed to watch them. One of the points of law raised in favor of the prisoners was, that inasmuch as the whole was done with the knowledge and assent of Mr. Boulton, the acts of Phillips were his acts, and the prisoners could not be said to have done that which was imputed to them against Mr. Boulton's will. The prisoners were convicted, and the case subsequently argued before the twelve judges, a majority of whom held the conviction for larceny correct. They thought that although Mr. Boulton had permitted or suffered the meditated offence to be committed, he had not done anything originally to induce it; that, his object being to detect the prisoners, he only gave them a greater facility to commit the larceny than they otherwise might have had: and that this could no more be considered as an assent than if a man, knowing of the intent of thieves to break into his house, were not to secure it with the usual number of bolts.*

* The King against Egginton and others, 2 Leach, 913; 2 Russ. 19.

### III.—THE INTENT ON THE PART OF THE TAKER.

Having now given you all the information I think necessary as to what constitutes a felonious *taking*, I cannot too strongly impress upon your mind that, in regard to the *felonious intent* of the prisoner at the time he takes the goods, there must be no reasonable doubt. His intention must be, as we have seen, wholly to deprive the owner of his property, and to appropriate it to his own use; but it is not necessary he should have a merely pecuniary or personal advantage in view, for if he intend to *despoil the owner* by destroying the goods—as by burning them, or throwing them into the sea—his intent will be equally felonious with an intention to sell them and keep the money. Thus, in the following case, where the object was to destroy the property, the offence was still held to be larceny. The prisoner, in conjunction with the wife of a man who was charged with stealing a horse, went to the stable of the owner, took the horse out, and backed it into a coal-pit. It was objected for the prisoner, on an indictment for stealing the horse, that it was not taken for the *purposes of theft*, the object not being *gain to the taker*. The prisoner being convicted, the opinion of the judges was taken, who thought the conviction right. Six of the judges held it not to be essential to constitute the offence of larceny that the taking should be for *personal gain*. They thought that taking fraudulently, with an intent wholly to deprive the owner of the property, was sufficient.* Upon this point the Criminal

* The King against Cabbage, Russ. and Ryan, 292.

Law Commissioners say, "The ulterior motive by which the taker is influenced in depriving the owner of his property altogether, whether it be to benefit himself or another, or to injure any one by the taking, is immaterial."* And you will agree with me, it would be very absurd were it otherwise. If a man, actuated by malicious feeling, take your property against your will, surely it matters not, in a moral point of view, whether his ulterior disposition of it be for his own pecuniary benefit, or to gratify his revenge: the result is the same—your detriment.

In cases of alleged theft by servants, where the property has been pledged, and the pawnbroker's duplicate carefully preserved, it has been frequently urged, on behalf of the servant, that the facts that he merely pledged the goods, and preserved the duplicate, were evidence that his original taking was for a temporary purpose only, he intending to redeem at a future time and restore the property: thus negativing the presumption that his intent was felonious, and with a view wholly to deprive the owner. Such a doctrine is a most dangerous one, and has been very properly so regarded whenever propounded.

The late Mr. Baron GURNEY tried a case of this description, and in summing it up to the jury, that very learned and excellent judge made these wholesome remarks—"I confess," said he, "I think, that if this doctrine of an intention to redeem property is to prevail, courts of justice will be of very little use. A more glorious doctrine for thieves it would be difficult to discover, but a more injurious doctrine

* 1 Report C.L.C. p. 17.

for honest men cannot well be imagined."* The facts should be strong and overwhelming indeed, to avail a prisoner on this ground, for it is not to be endured that a person in whom we place confidence, and to whom we entrust our property, should be permitted to pawn it on the mere speculation that he may be able, at some future day, to redeem and replace it.

I had occasion in the first chapter to mention that one of the consequences attendant upon a conviction for felony is a forfeiture of the felon's goods, and that in some cases the court is empowered to order the restitution to the owner of the property of which he has been deprived. This is a convenient place to remind you of the latter fact, and as it is as well you should know the provisions of the section of the statute which gives that power, I append it in the form of a note.† I likewise add the sec-

* The Queen against Phetheon, 9 C. & P. 552.

† 7 and 8 Geo. IV. c. 29, sec. 57, to encourage the prosecution of offenders, enacts, "That if any person, guilty of any such felony or misdemeanor as aforesaid, in *stealing*, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case *the property shall be restored to the owner, or his representative;* and the *court*, before whom any such person shall be so convicted, *shall have power to award*, from time to time, *writs of restitution for the said property, or to order the restitution thereof in a summary manner:* provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer

tion which forbids, under penal consequences, the advertising a reward for the restoration of stolen property, accompanied either directly or indirectly with an intimation that the thief shall not be prosecuted. The compromising or compounding of an offence is punishable much more severely, namely, by imprisonment and fine. Justice abhors everything in the shape of interference with its due and impartial administration;—if a crime be committed, the whole body of society is aggrieved, and the atonement which is demanded and required is not of a private but of a public nature.*

I now leave the consideration of the subject of larceny, and in so doing allow me to assure you that

or delivery, by some person or body corporate, *for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had, by any felony or misdemeanor, been stolen, taken, obtained, or converted as aforesaid,* in such case the court shall not award or order the restitution of such security."

* By sec. 59 it is enacted, "That if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, *and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property,* or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement; in any of the above cases, every such person shall forfeit the sum of fifty pounds for every such offence."

your being able to understand thoroughly the law in reference to kindred offences, will greatly depend upon your acquaintance with those principles to which, in the preceding pages, I have called your special attention.

## CHAPTER III.

### OF EMBEZZLEMENT BY CLERKS AND SERVANTS.

CLOSELY allied to the subject of theft by clerks and servants, of which I have already made mention, is that of embezzlement by persons in those capacities. Sir Robert Peel's statute (7 and 8 Geo. IV. c. 29, sec. 47), by which the law as it previously existed was clearly defined, and which is in operation at this moment, enacts "that if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security for, or in the name, or on the account of, his master, and shall fraudulently embezzle the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master," &c.

You have seen that if your clerk or servant have the possession of your property, that is, the care of it on your behalf, and feloniously appropriate it to his own use, he is guilty of stealing. But in that case the property must have been already in your own possession, actual or constructive, otherwise his fraudulent misappropriation would not have been felony. To remedy the defective state of the old law, the legislature passed enactments—the most recent of which I have just laid before you—by which, if your clerk or servant, having authority to do so, receive goods or money on your account,

and fraudulently appropriate the same to his own use, he is punishable in like manner as if he had committed a larceny or theft at common law: the distinction between larceny and embezzlement being, that if the property at the time it is taken by your servant had been already in your possession (*e.g.*, deposited in your premises or in your cart), such taking, if fraudulent, is *larceny*:* on the other hand, if it be received by your clerk or servant by virtue of his employment and in the course of his duty, on your behalf, and instead of delivering it into your possession, he fraudulently appropriates it to his own use, the offence is *embezzlement*. To discuss this at any length is needless. Subtle questions have arisen as to who are servants within the meaning of the statute, and what acts constitute embezzlement; but I am happy to say the administration of the law in these days is characterised by a discouragement of technical objections which are at variance with a common-sense and liberal interpretation of the statutes; hence the rescue of an evil-doer from the just consequences of his crime, by means of such subtleties, is an occurrence of far less frequency than formerly. Escape from punishment, on the ground that the delinquent is indicted for larceny instead of embezzlement, and *vice versâ*, not an uncommon occurrence a few years ago, is now provided against by Lord CAMPBELL'S Act.†

* The Queen against Reed, 1 Dears. C.C. 257.

† 14 and 15 Vict. c. 100, sec. 13. "If upon the trial of any person indicted for embezzlement, as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any

Let us now ascertain what are the ingredients of embezzlement; and who may be guilty of this offence.

1. He (or she) must be a clerk or servant, or employed in the capacity of such:

2. He must have received the property into his possession for, and on account of, his master, by virtue of his employment, and in the course of his duty as such clerk or servant: and

3. He must have fraudulently *embezzled* the property (or some part of it).

### I.—WHO ARE CLERKS OR SERVANTS.

Every person who is employed as a clerk, or servant, or in the capacity of such, is within the meaning of the law.

Difficulties have been suggested over and over again on the trials of persons charged with embezzlement, with a view to show that they were not autho-

such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement."

rised to receive the money or goods with the embezzlement of which they have been charged. To cite those cases would be quite out of place in this work. But for the present purpose, suffice it to say, it may be safely assumed that every person—man or woman—who is employed by another in the capacity of clerk or servant, and is authorised by his employer to receive on his account goods or money, is such a person as is contemplated by the statute as one who may be guilty of embezzlement. And it matters not in what manner the clerk or servant is remunerated, whether wholly by wages, or partly by wages and partly by commission, neither need the employment in such capacity be of a permanent nature. At one time doubts were entertained whether a person who was paid for his services otherwise than by mere wages was a servant within the meaning of the statute; but such doubts have been entirely set at rest by modern decisions.

Even the allowance of a portion of the profit on goods sold will not destroy the character of master and servant. *Hartley* was employed to take coals from a colliery and sell them, and bring the money to his employer. The mode of paying him was by allowing him two third parts of the price for which he sold the coal, above the price charged at the colliery. It was objected that the money was the joint property of himself and his employer; and the point was reserved for the judges, who held that the prisoner was a servant within the Act. They said that the mode of paying him for his labour did not vary the nature of his employment, nor make him less a servant than if he had been

paid a certain price per chaldron or per day; and as to the price at which the coals were charged at the colliery in this instance, that sum he received solely on his master's account as his servant, and by embezzling it became guilty of the offence within the statute.* So where *Hoggins* was employed by the prosecutors, who were turners, and was paid according to what he did. It was part of his duty to receive orders for jobs, and to take the necessary materials from his master's stock to work them up, to deliver out the articles, and to receive the money for them; and then his business was to deliver the whole of the money to his masters, *and to receive back*, at the week's end, *a proportion of it for working up the articles*. Having executed an order, the prisoner received three shillings for which he did not account. Being convicted of embezzling the three shillings, the judges held the conviction right.† So, where a partner in a firm contracted to give his clerk one-third of his own share in the profits. The other partners knew of and assented to the arrangement. It was held by Chambre, J., that this did not make the clerk a partner, and he was convicted of embezzlement.‡ The above learned judge quoted a parallel case on the Northern Circuit before Mr. Baron Wood. The prisoner was employed by a Mr. F. as master of a coal vessel, who sent him with a cargo of coals. The custom of the trade was for the person who superintended the business to receive two-thirds of the freight, and the owner one-

* The King against Hartley, Russ. and Ryan, 139.
† The King against Hoggins, Id. 145.
‡ King against Holmes, 2 Lew. C.C. 256.

third. The prisoner took the whole; whereupon he was indicted for embezzlement, and convicted. It was objected, on his behalf, that he and the owner were joint proprietors of the freight, but a large majority of the judges held the conviction right.

Whether a traveller for various mercantile houses, taking orders and receiving money on account of each, could be considered a clerk to each within the meaning of the statute, has been the subject of conflicting opinions. The question whether a man is the clerk or servant of another, or merely an *Agent* or *Factor*, must be determined by a consideration of the particular circumstances of each case. One can easily imagine how persons may create the relationship of master and servant, for the purposes of selling goods and collecting money, so as to be within the meaning of this statute, without any limitation on the part of the servant as to the number of his masters. I cannot see why one person may not be the clerk of many masters, in like manner as another may be the master of many clerks.* But by a decision of the Court of Criminal Appeal during the present year,† it appears to be now very well settled that to render a man liable on a charge of embezzlement, in any such case, the relationship of master and servant must *very clearly appear*. *Carr* was indicted for embezzling the property of his employers, Stanley and Co. He was employed by them and other houses as a traveller, to take orders for goods, and collect money for them from their customers. He did not live in the house with them. He was paid by a commission of five

* The Queen against Bayley, 1 Dears. and Bell, 126.

† The Queen against Walker, 1 D. and Bell, 600.

per cent. on all goods sold, whether he received the price or not, provided they proved good debts. He had also a commission upon all orders that came by letter, whether from him or not. He was not employed as a clerk in the counting-house, nor in any other way than as above stated. Stanley and Co. did not allow him anything for the expenses of his journeys. Having been convicted of embezzling money, the property of Stanley and Co., the judges, on a case reserved, held the conviction right.*

A person employed by *overseers of the poor*, under the name of their *accountant and treasurer*, is a clerk within the statute. So, it was held, where a person who acted as *clerk to parish officers*, at a yearly salary voted by the vestry, was charged with embezzlement, as clerk to such officers. So, an extra collector of poor-rates, paid out of the parish funds by a per centage, was held by Mr. Justice RICHARDSON to be the clerk of the churchwardens and overseers. So, a treasurer to the guardians of the poor, under a local act, was held to be a servant of the guardians.† So, a clerk to a joint-stock banking company may be convicted of embezzling the money of the company, notwithstanding he is a shareholder.‡

### II. WHAT CONSTITUTES A RECEIVING IN THE COURSE OF THE CLERK OR SERVANT'S DUTY.

We have seen that the statute says the property must be received by the clerk or servant "by virtue

* The King against Carr, Russ. and Ryan, 198.

† Power's Roscoe, 424

‡ The Queen against Atkinson, Carr. and M. 525.

of his employment," therefore, to render the fraudulent detention of your money an embezzlement in point of law, it must have been his duty to receive it. Hence, it is not every person who is employed as your clerk or servant who is within the provisions of the statute, unless it form part of his employment to receive money on your behalf; but, it should not be forgotten, if a servant who is in nowise authorised to receive property on your account, nevertheless do, and, it having been reduced into your possession, he appropriate it to his own use, he is punishable for larceny, though not for embezzlement. At the same time, be it observed, if, on any particular occasion, you should authorise him to receive property, although his so doing in obedience to your order would be an act out of his ordinary employment, nevertheless, in case of fraudulent misappropriation, he will be guilty of embezzlement, as completely as though it was his everyday duty to receive money or goods on your account.

Ingenious suggestions upon this point are frequently made by Counsel, in the zealous discharge of their duty to their clients, but the courts very properly discourage them, and if, according to a plain common-sense construction of the nature of the prisoner's employment, it appears that *although it may not have been part of his duty* to receive money, in the capacity in which he was *originally* hired, *yet that he has been in the habit of receiving money for his master, he is within the statute.* Thus, where a man was hired as a journeyman miller, and not as a clerk or accountant, or to collect money, but was in the habit of selling small quantities of meal on his

master's account, and of receiving the money, the judge held him to be a servant, saying that he had no doubt the statute was intended to comprehend masters and servants of all kinds, whether originally employed in any particular character and capacity or not.* And in the case of a person named *Whiting*, who was tried not long ago before Mr. Baron MARTIN at the Central Criminal Court, the master said in cross-examination that he had not told the prisoner (who was his servant) to collect money, as he did that himself; that although prisoner had received money before, it was not his ordinary duty to do so, and he had not told him to receive it then. Upon objection taken that the receipt of the money was not in the course of the prisoner's employment, in overruling it the learned Baron said—"I am in the habit of putting a *common-sense construction upon the law*, and I am of opinion the prisoner did receive this money by virtue of his employment;" and he was found guilty.†

One *Beechey's* duty was to receive money every evening from his master's out-door porters, and pay it over on the following day; but it was no part of his duty, neither was he expected, in the course of his employment, to receive any money direct from the customers themselves. One day he called upon one of his master's customers for 11*l.* 8*s.* 7*d.*, the amount of his account, received the money, and embezzled it. It was objected that he did not receive this money in the ordinary course of his employment; but the Court held otherwise, and were of opinion his receipt

* Power's Rosc. 421, Barker's Case, Dow. & Ry. N.P.C. 19.

† The Queen against Whiting, C.C.C. Rep. for August, 1857.

of the money was in the course of his employment, and that it did not matter whether he received the money from the porters, or from the customer; he received it on behalf of his master, in the course of his employment, and was properly convicted.*

You will have seen from the above case that, whether the receipt by your clerk be from the hands of your customer, or from another clerk who may have previously received it, is of no consequence. Until it reach *you*, or be, as it is said, reduced into your possession, as by being placed in your hands, your bank, or your till, the fraudulent misappropriation by your servant is embezzlement.

### THE ACT OF EMBEZZLEMENT.

Perhaps the most important branch of this subject to you, as an employer, is that upon which we have now entered. To embezzle, according to JOHNSON, is to *steal privately:* always keep in view that concealment and secrecy constitute the very essence of this offence. A mistake in accounts, and the erroneous detention of money accompanied by its appropriation to his own use, by your clerk or servant, would not be embezzlement; because the whole matter had originated in error. Neither would a bare non-payment to you of the money received on your behalf be considered by the law as an embezzlement, if its receipt were accounted for in the ordinary and usual manner, and there was no denial or concealment of that fact. As I have just told you, there must be concealment and secrecy to render a

* The King against Beechey, Russ. and Ry. 319.

clerk or servant guilty of embezzlement. In the first of the cases I have assumed, the matter would be mere subject of account between your clerk or servant and yourself; and it would be in violation of every principle of justice and mercy to make a man amenable to the criminal law for a mere error, even though the result were the total loss of the money so erroneously misappropriated. But it should very clearly appear that the omissions of persons charged with this offence are unintentional, and not designed for the purposes of fraud. A denial, or wilful omission to make certain entries in the books, or a wilful omission to pay over money received at the usual time for so doing, which would be equivalent to a denial of the receipt, constitutes an act of embezzlement, and was so held by Mr. Justice COLERIDGE in the case of one *Jackson*. This person was clerk to his master, the prosecutor, and it was his duty to account on the evening of every day for the money received during the day by him for his employer, and to pay over the amount. He received three sums for his employer on three different days, and neither accounted for those sums, nor paid them over: he never denied the receipt of them, or rendered any written account in which they were omitted. The learned judge said, that if the servant wilfully omitted to account for these sums and pay them over on the respective days on which he received them, these were embezzlements, and that such wilful omissions to account and pay over were equivalent to a denial of the receipt of them.* So, where a servant had received money for her master,

* The Queen against Jackson, 1 C. and K. Rep. 384.

as was her duty, and on receiving it went off to Ireland, Mr. Justice COLERIDGE held that the circumstance of the prisoner having quitted her place, and gone off to Ireland, was evidence from which the jury might infer that she intended to embezzle the money: she was found guilty.*

The act of embezzlement is complete, no matter when discovered, the moment the prisoner fraudulently detains the money from his employer, and dates back from that period, however distant: denial, or wilful omission of entries indicative of, the receipt; nonpayment at the proper time; absconding; are each and all merely evidence from which a jury may infer that he has been guilty of it.

And now I conceive I have made you acquainted with so much of the law relative to this offence, and its application, as will enable you, in ordinary cases, readily to determine who is a clerk or servant within the meaning of the statute: what constitutes a receipt in the course of his duty; and what acts amount to an embezzlement.

* Sarah Williams' Case, 7 C. and P. 338.

## CHAPTER IV.

### OF FRAUDS BY BANKERS, AGENTS, AND OTHERS ENTRUSTED WITH PROPERTY.

We have now arrived at the consideration of a subject of very deep interest to every one possessed of property of his own, or entrusted with that of others. Strange to say, in a country like this, the fraudulent acts of bankers and others, in the character of trustees and agents, were not made the subject of penal legislation until a comparatively recent period. In the reign of George the Third a statute was passed affecting bankers so far as related to their fraudulent disposition of money or valuable securities entrusted to them for special purposes indicated *in writing*, but that statute was repealed and substituted by an amended and now existing enactment passed in the reign of George the Fourth. The punishment of persons coming under the denomination of *factors or agents*, entrusted with *goods or merchandise for the purposes of sale*, and who fraudulently and in violation of good faith convert such property, or the merchantable title thereto (such as warrants, bills of lading, &c.), to their own use, is provided for by another section of the same Act, and by a subsequent statute passed in the present reign, and called the "Factor's Act." The principal sections are of too much importance to be omitted, and therefore I subjoin them

at length in the form of a note.* I shall not take up your time by indicating the very many respects

* By the 7 and 8 G. 4, c. 29, § 49, it is enacted, that "if any money, or security for the payment of money, shall be intrusted to any *banker, merchant, broker, attorney, or other agent*, with any *direction in writing* to apply such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith, and contrary to the purpose so specified, in anywise convert to his own use or benefit such money, security, or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; and if any chattel, or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney, or other agent, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer or pledge, and he shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit such chattel or security, or proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable," &c.

The next section (50) provides for the due protection of the persons named in the preceding one, in the event of their dealing with the money or securities under certain circumstances: "nothing hereinbefore contained relating to agents shall affect any trustee in or under any instrument whatever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised

in which the former statute falls short of being a measure equal to the punishment of persons guilty of breaches of trust as gross and heartless, and oftentimes far more destructive of the comfort and happiness of families than the outrages of the highwayman or burglar. Suffice it to say this was so, and I fear these pages will meet the eyes of

in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent, from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim, or demand, entitling him by law so to do, unless such sale, transfer, or other disposal, shall extend to a greater number or part of such securities and effects than shall be requisite for satisfying such lien, claim, or demand."

Sect. 51 has special reference to *factors* and *agents* entrusted with goods or merchandize for sale: "if any factor or agent intrusted, for the purpose of sale, with any goods or merchandize, or intrusted with any bill of lading, warehousekeeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandize, shall, for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents, as a security for any money or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same

but very few who cannot recall such instances to personal recollection. The "Fraudulent Trustees' Act," scarcely yet a year old, will be found, I believe, adequate to reach almost every species of delinquency in the shape of fraudulent breaches of trust. In fact, so comprehensive are its pro-

shall not be made a security for or subject to the payment of any greater sum of money than the amount which, at the time of such deposit or pledge, was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent."

This statute was amended by a subsequent one (5 and 6 Vict. c. 39, § 6), by which it is enacted: "if any agent entrusted as aforesaid [with the possession of goods, or of the documents of title thereto] shall, contrary to or without the authority of his principal in that behalf, for his own benefit, and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or documents of title so entrusted to him as aforesaid, as or by way of a pledge, lien, or security; or shall, contrary to, or without such authority, for his own benefit, and in violation of good faith, accept any advance on the faith of any contract or agreement, to consign, deposit, transfer, or deliver such goods or documents of title as aforesaid, every such agent shall be deemed guilty of a misdemeanor, and being convicted thereof shall be sentenced to transportation for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award; and every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer, or delivery, or in accepting or procuring such advance as aforesaid, shall be deemed guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court shall award as hereinbefore last mentioned: provided, nevertheless"—here follows a proviso for the protection of agents, substantially the same as that to § 51, 7 and 8 Geo. 4, c. 29.—See page 66.

visions, I fully anticipate that many of the topics we have had under discussion in the chapter on larceny will not be much longer of importance: for instance, in respect of the question whether the original taking of property were felonious, you will presently see that even if it were not so—if you part with the possession of your property for any special purpose to a person who receives it in good faith, and *afterwards*, in violation of that faith, fraudulently converts it to his own use, that act, although not contemplated when he received your property, will render him liable to be convicted of larceny and to the pains and penalties attaching to a common thief. You will remember this was not so heretofore. We have seen that if the *original taking* was not "felonious," the subsequent wrongful conversion of your property was a mere breach of trust for which you had, indeed, your *civil* remedy, but, alas! only against those who, having squandered your property, would probably not have been able to pay your solicitor's costs. The Fraudulent Trustees' Act of 1857, will strike terror into the hearts of such men.

The preamble, being that which precedes the enacting clauses of a statute, usually indicates, in few words, the necessity therefor, or the defects which it is intended to remedy: that to the Fraudulent Trustees' Act declares that "it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and others entrusted with property." The first two clauses may be considered together, as forming that portion which relates to the persons therein specially indicated, the two

next include every description of persons while the succeeding two have reference to directors and others connected with public companies, so many of which have recently been proved to be mere bubbles, carried on by persons who, regardless alike of principle and truth, imposed upon the public by fraudulent misrepresentations, and thus enriched themselves by making others "poor indeed."

By the first section it is enacted "If any person being a *trustee* of any property for the benefit, either wholly or partially, of some other person, or for any *public* or *charitable purpose*, shall, with intent to defraud, convert or appropriate the same or any part thereof, to or for his own use or purpose, or shall, with intent aforesaid, otherwise dispose of or destroy such property, or any part thereof, he shall be guilty of a misdemeanor." Before the passing of this Act, a person to whom, relying upon his high honour and integrity, you had entrusted property to be disposed of either for the benefit of individuals or charities, might, at any moment, have converted your property into ready money, appropriated it to his own use, and utterly dissipated every farthing, without being answerable otherwise than as a defendant in Chancery or in an action at law! A careful perusal of the above clause will shew you that one guilty of such malversation is no longer without the scope of the criminal law.

The second, besides being more comprehensive than Sir Robert Peel's statute (7 and 8 Geo. IV., c. 29), remedies the defects therein. You will remember in section 49 of that statute the words

"*with directions in writing*:" no such qualification exists in the present statute, which reads thus: "If any person, being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, or in any manner convert or appropriate to or for his own use such property or any part thereof, he shall be guilty of a misdemeanor."

The third section is intended to provide for the punishment of persons to whom powers of attorney are given, and who, in violation of good faith, and in contravention of the purposes for which such power was granted, shall act fraudulently: it is in these words—"If any person intrusted with any power of attorney for the sale or transfer of any property shall fraudulently sell or transfer or otherwise convert such property or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor."

In order that you may thoroughly appreciate the value and importance of the fourth section, bear in mind that the term *bailee*, from the French *bailler*, to deliver, is applicable to everyone who holds in his possession the property of another which is *delivered* to him for some special purpose, the trust or implied contract being that possession shall be retained only during the period necessary for fulfilling the trust, or performing the contract. So, a jeweller who has your watch to repair; a laundress your linen to wash; a tailor your coat to mend; a carrier your goods to convey and deliver; each is a *bailee*, and

before the passing of this statute the jeweller might have wrongfully sold your watch; the laundress have given your linen to her son who was going to sea; the tailor have pawned your coat; and the carrier have converted your goods into cash and appropriated it to his own use; but neither the one nor the other would have been thereby amenable to the criminal law unless, as they used to say in the olden time, the *bailment* had been "determined by *breaking bulk* or otherwise!" I repeat the phrase, not that it is likely longer to concern us, but rather for the sake of "auld lang syne." It was a legal refinement of great utility to dishonest people, but may now be dismissed from consideration, together with sundry other technicalities which need only be named to cause an irresistible smile that learned and reasonable men, such as HALE, HAWKINS, and BLACKSTONE, ever countenanced such pernicious sophisms.

The fourth section enacts "If any person, being a bailee of any property, shall fraudulently take or convert the same to his own use, or to the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, he shall be guilty of larceny." You may remember that while we were engaged in the consideration of the subject of larceny, I told you that recent legislation would probably much alter the nature of the ingredients of that offence. You now see my reason for making that remark. Although *larceny* or theft at common law remains so still, and deserves all the attention we have bestowed upon it, yet acts which did not constitute larceny at common

law, now do so by virtue of the statute before us. Behold the contrast:—

| *At Common Law:* | *Now, since Fraudulent Trustees' Act:* |
|---|---|
| 1. The original taking must be felonious, and | 1. The original taking may be quite lawful, and |
| 2. Against the will of the owner. | 2. With the entire consent of the owner. |

To sum up the matter in few words, the criminal law as it now stands will, I believe, be found adequate to reach every person who, having your property in his hands, it signifies not one jot how he originally became possessed of it, shall fraudulently and in violation of that good faith which should subsist between man and man, convert it to his own use or to that of any other person except yourself.

It cannot be too generally known that for this much-needed legal reform, the country is indebted mainly to Sir RICHARD BETHELL, the late Attorney-General, who succeeded, last year, in passing this most useful measure through Parliament.

The fifth, sixth, seventh, and eighth sections apply to another class of persons—directors, public officers, managers and members of bodies corporate, and public companies. By "bodies corporate" is meant associations of individuals incorporated by private Act of Parliament, or by charter from the Crown. "Public companies" are such as are composed of a number of persons registered under the Joint-Stock Companies' Act, or in some cases acting without any such sanction.

No reader of these pages is ignorant of the fearful havoc which has been made within the past few

years amongst capitalists, large and small, by the proprietors (yclept directors, managers, committeemen, &c.), of banks, companies, &c. With much difficulty the law was made to reach some of the depredators, while others escaped unscathed. The next four sections which I am about to lay before you will, I think, be found amply sufficient for the purpose of bringing to justice everyone who shall be a party to imposition on the public, either as a director, member, or public officer of any such company, and who shall fraudulently take or apply to his own use any of the money or other property thereof; or by falsely and fraudulently destroying or altering the books, or making any false representation as to the real state and condition of the company—with intent to deceive existing shareholders, or induce any person to become one. Those sections are of interest and importance, hence I subjoin them at length.*

* Sec. 5. "If any person, being a director, member, or public officer of any body corporate or public company shall fraudulently take or apply for his own use any of the money or other property of such body corporate or public company, he shall be guilty of a misdemeanor."

Sec. 6. "If any person, being a director, public officer, or manager of any body corporate or public company shall as such receive or possess himself of any of the money or other property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, he shall be guilty of a misdemeanor."

Sec. 7. "If any director, manager, public officer, or member of any body corporate or public company shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings, or security belonging to the body corporate or public company of which he is director or manager, public officer,

The ninth section provides for the punishment of any person who shall receive any property knowing that it had been the subject of the fraudulent disposition hereinbefore named, and by the tenth section, a person convicted under this Act is declared to be punishable by penal servitude for three years, or such other punishment by fine, or by imprisonment, with or without hard labour, for not more than two years, as the Court shall award.

Many of the remaining provisions of the statute relate to the mode of procedure, and matters of practice, of no interest except to a professional reader, for whom these pages never were intended. I annex the interpretation clause, by which you will see that the intention of the framers of this statute was that it should be as comprehensive as possible, thereby, to some extent, making amends for the hitherto disgracefully lax state of our criminal law in reference to persons entrusted with the property of others.*

or member, or make or concur in the making of any false entry, or any material omission in any book of account or other document, he shall be guilty of a misdemeanor."

Sec. 18. "If any director, manager, public officer of any body corporate or public company shall make, circulate, or publish, or concur in making, circulating, or publishing any written account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor."

* Sec. 17. The word "trustee" shall in this Act mean a trustee on some express trust created by some deed, will, or instrument

in writing, and shall also include the heir and personal representative of any such trustee, and also all executors and administrators, liquidators under the Joint-Stock Companies' Act, 1856, and all assignees in bankruptcy and insolvency. The word "property" shall include every description of real and personal property, goods, raw or other materials, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; and such word property shall also denote and include not only such real and personal property as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds."

## CHAPTER V.

### OF FRAUD, CHEATING, AND OBTAINING PROPERTY BY FALSE PRETENCES.

THE terms Fraud and Cheating were originally applied rather to deceitful practices which affected the public at large than to transactions between individuals. Such, for instance, as selling unwholesome provisions, the using of false weights and measures, counterfeit trade marks, &c. Until a comparatively recent period, transactions between individuals, however fraudulent in a moral point of view, were not, except under special circumstances, recognised by the criminal law. Hence it was that in the olden time frauds of a very grievous nature, by which money and property were obtained from the unwary by the grossest falsehood and misrepresentation, were practised with almost entire impunity.

To Sir Robert Peel the country is indebted for a revision of our criminal code, by which, on the one hand, its severity was mitigated, and, on the other, many important amendments were introduced; amongst which those relating to fraud have been of the greatest benefit to the commercial world.

A writer of high authority* has well defined fraud as "a deceitful act, or artful device, contrary to

* 2 Hawkins' "Pleas of the Crown," c. 71.

the plain rules of common honesty, by which a man is induced to part with his property."

Although this definition is sufficient to convey a correct idea of the legal meaning of the word *fraud*, it will be seen hereafter that the offence of which we are about to treat is so specifically defined by an Act of Parliament, or statute, that reference to the above definition, except for general information, would but little help you in arriving at a clear conception of the precise nature of the offence of obtaining property by false pretences. As distinguished from *Larceny*, or theft, it will, however, be necessary to keep in view that, in the case of larceny, or theft, the abstraction of the property stolen is wholly against the will of the owner, just as much so as in highway robbery; whereas in the case of *fraud*, or obtaining property by false pretences, the owner voluntarily parts with his goods believing the representations made to him to be true. And thus it is, that although a person exercise all due and reasonable care to prevent himself from being imposed upon, it very frequently happens that he is induced, by reason of certain false representations fraudulently made, and of the truth of which he has no doubt, to part with his property, and so be deprived thereof as completely as if it had been abstracted from him by open robbery, or clandestine theft.

Although the subject is by no means devoid of interest, yet inasmuch as a history of the course of legislation on fraud from the time of Henry VIII. down to the present day would not be of the slightest practical utility, I shall proceed at once to

lay before you the law as it now exists in relation to this class of crime.

An Act of Parliament of a very comprehensive character was passed in the latter part of the reign of George IV. (7 and 8 Geo. IV., c. 29), by which it is enacted "That if any person shall by any false pretence obtain from any other person any chattel,* money, or valuable security,† with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor," and be liable to be transported for seven years (now penal servitude for four years), or fined and imprisoned according to the discretion of the court. Now, that is the law as it exists at this moment, and I don't think any one can with reason complain that there is any ambiguity about it, or that it is other than very plain intelligible language, defining an offence and prescribing a punishment. But, simple and intelligible as the words of the law unquestionably are, you must bear in mind that the offence is constituted of several distinct ingredients, the strict proof of every one of which is necessary to procure the conviction of an accused person.

Before proceeding one step further, you should know that if your property be fraudulently obtained from you, whether under the guise of an ordinary business transaction, as is most usually the case, or by way of gift, loan, contract, or even as alms in

* *Chattels*, in the sense used above, are understood in law to be all such things as are moveable, and may be carried about, such as merchandize, furniture, jewellery, clothes, books, &c.

† *Valuable security* means any document evidencing a title to money or goods, such as debentures, bonds, cheques, bills, warrants, orders for the transfer or delivery of goods, &c. &c.

charity, it matters not: the law is equally applicable.

The ingredients of the offence are:—

1. There must be a false pretence.

2. The person making use of the pretence must know it to be false.

3. There must be an intent to defraud.

4. The owner of the property must have been deceived by the pretence and have parted with his property in consequence of his belief in its truth.

5. The property obtained must be such as is contemplated by the statute.

In this order we shall proceed to consider each ingredient.

### I.—THE PRETENCE.

The statute uses the very comprehensive term "any false pretence," but it is of the greatest importance that the meaning of the term "pretence" should be well considered, and its meaning as interpreted by the courts be well understood. It is therefore absolutely necessary that you should, in the first place, well understand what is a false pretence within the meaning of the statute, for the pretence is the very foundation or corner-stone of the offence. As to the precise nature of the pretence it is quite immaterial. The statute expressly says *any* pretence. "If any person shall, by *any* false pretence obtain from any other person any chattels, money, or valuable security, with intent to cheat and defraud any person of the same, every such offender shall be guilty," &c.

In a recent case argued before the judges in the Court of Criminal Appeal, the late Mr. Baron

ALDERSON pronounced so clear a definition of a false pretence, that I cannot do better than quote the words of that very learned judge. "If," said he, "a man represents as an existing fact that which is not an existing fact, and so gets your money, that is a false pretence; for instance, that a certain church had been built, and that there was a debt still due for the building, when there was no debt due, that would be a false pretence. * * * Or, take the common case: the prisoner says, 'I am sent by Mrs. T. for a pair of shoes.' Is not that a false pretence?" And the Lord Chief Justice of the Queen's Bench, Lord CAMPBELL, in the same case, said, "The legislature meant to prevent such gross frauds as may be easily perpetrated, though an inquiry might be easily made. Suppose a tax-gatherer demands money for taxes alleged to be due; you inquire, and find that the persons through whom you usually make such payments have not paid it, and you accordingly pay it, though in reality nothing be due, would not that be a false representation?"* And in a still more recent case, the late Lord Chief Justice JERVIS said, to support a charge of false pretences there must be "a knowingly false statement of a supposed bygone or existing fact, made with intent to defraud, and an obtaining by means of that representation."†

You will have observed the learned judges used the words "existing fact;"—always bear in mind those words when considering this matter, for it is not any false statement in reference to something *to be done*, or

* The Queen against Woolley, 19 L. J., M. C. 165.
† The Queen against Welman, 1 Dears. C. C. R. 188.

which *may* be done, or *may* happen, or any promise to do something, which will constitute a false pretence in the eye of the law. Neither must it be supposed that every mere naked lie, improbable and absurd upon the face of it, which one man may tell another, and the fallacy of which may be readily detected, is to be considered in point of law a *false pretence* within the meaning of the Act.

"The term 'false pretences,' says Mr. East, "is of great latitude, and was used, as Mr. Justice ASHURST remarked, to protect the weaker part of mankind, because all were not equally prudent; it seems difficult, therefore, to restrain the interpretation of it to such false pretences only, against which ordinary prudence cannot be supposed sufficient to guard. But still it may be a question, whether the statute extends to every false pretence, either absurd or irrational on the face of it, or such as the party has, at the very time, the means of detecting at hand; or whether the words, which are general, shall be considered co-extensively with the cheat actually effected by the false pretences used."*

The pretence to be fraudulent, and the person making it, punishable, must be a deliberate false representation relative to some existing, or pretended to be existing—person, fact, matter, or thing —made for the purpose and with the design of imposing upon the person to whom it is made, and thereby inducing him to part with his property. Therefore, a false statement relative to a mere contingency conveying a promise as to something which may occur or be done at a future time, and not involving any decla-

* 2 E.P.C. 828.

ration relative to any existing or pretended to be existing fact, will not constitute such a false pretence as the statute contemplates. As if a person were to say to a tradesman, "If you let me have these goods, I will pay you to-morrow, as I shall receive a thousand pounds, and have it in the Bank of England in my name before that time;" such a statement, no matter how utterly false and foundationless, would not be such a false pretence as would render the person making it liable to the criminal law, because it is nothing more than a promise to do something at a future time. But suppose he were to say, "If you let me have these goods I will pay you for them to-morrow, as I have just received a thousand pounds, and it is now lying at the Bank of England, but it is not convenient to draw any out till to-morrow," whereas in truth he had not just received one thousand pounds, and no money of his was lying at the Bank of England, the case would be different, for here the person represents that he *has* the money—not that he will have it—and that it *is* lying at the Bank, not that it *will be* there to-morrow, and thus the *actual pretence* does not relate to any future contingency, but to certain pretended to be existing facts. And so, although the pretence be mixed up, as in the case just put, with something relating to the future, or connected with a promise to do something hereafter, or with a statement in reference to a probable contingency; nevertheless, if any one of the pretences be clearly and distinctly as to "an existing fact," and be the means by which you are imposed upon, the remainder may be wholly disregarded.

Thus, in a case tried this year, a woman named *Mary Ann Fry* was convicted of obtaining ten shillings from a servant girl out of place, named Mole, by falsely pretending that she (Fry) kept a shop, and that Mole might go and live with her until she got a situation; and that Fry's husband had ordered a pair of blankets, but she had not money enough to pay for them, &c. On the trial there was evidence that Fry did not keep a shop, but a failure of proof as to the falsehood of the various other statements; and the question whether the conviction was correct was submitted to the Court of Criminal Appeal.

Lord CAMPBELL pronounced the judgment of the Court:—"We are all of opinion that the indictment is good, and also that it is supported by the evidence. Here is a long string of false pretences, many of which are not proved by the evidence to be false; but the indictment alleges, among the rest, that the prisoner *kept a shop*, and the evidence shews that she did not keep a shop; and it is found by the jury that it was upon the faith of the representation of the prisoner's *keeping a shop* that the money was advanced by the prosecutrix."*

And where four persons came to the prosecutor, representing that they *had betted* that a person named Lewis should walk a certain distance within a certain time, and that they should probably win, and thus obtained money from the prosecutor towards the bet, it was objected that a representation referring to a future transaction is not an indictable offence. The Court was of opinion, that false pretences, although referring to future trans-

* The Queen against Fry, 27 L.J.M.C., 68.

actions, were equally within the statute.* So, in a case tried in the early part of the present year, a man named *West* was convicted of obtaining money by false pretences, under these circumstances. The prisoner went to the shop of a Mrs. Wright, a marine store-dealer in Maidstone. He told her he had bought a quantity of hides and sheep skins, and had loaded them on a waggon, and paid ten shillings on them to keep them safe. He then proceeded to say that he should have to pay seven pounds ten shillings for the skins, and asked Mrs. Wright for four pounds ten shillings towards that sum, and that if she would let him have that amount he would bring the skins and sell them to her. After much hesitation Mrs. Wright gave him the money, and it subsequently was discovered the whole story was a pure fabrication. The prisoner was tried for the fraud, and upon the trial Mrs. Wright admitted that she would not have parted with her money unless she believed the prisoner would bring the skins to her, as she expected to make a profit by them. On this the learned judge entertained some doubt whether the case was within the statute, as the *promise of the prisoner to bring the prosecutrix the skins* was evidently the real inducement which caused her to part with her money. After a very able argument on both sides, the Court of Criminal Appeal decided that the case was within the statute, the representation being as to an existing fact, although accompanied by a promise to do something at a future time.†

* Young's Case, 1 T. R. 98.

† The Queen against West, 1 D. & B. 584. See also Queen against Fry, ib. 449.

Whether a false pretence, in respect of the *quality* of goods, knowingly made in the course of commercial transactions, such as buying and selling, can be the subject of indictment, has been recently the cause of considerable and very learned discussion. Within twelve months three cases were argued before the Court of Criminal Appeal, of each of which I shall hereafter give you some particulars.* My present purpose is to state, as shortly as possible, what is the present state of the law on that which must most deeply interest you, as one engaged in commerce or trade.

In *Bryan's* case, which was the last argued, the prisoner had been convicted of obtaining money from pawnbrokers by making false statements relative to the quality of goods (plated spoons and forks) which he had offered in pledge. Lord CAMPBELL, in pronouncing his opinion, said—"I am of opinion this conviction cannot be supported. It seems to me to proceed upon a mere misrepresentation, during the bargaining for the purchase of a commodity, of the *value* of that commodity. * * * It resolves itself into the mere representation of the value of the article; and bearing in mind that the article was of the species that it was represented to be to the purchaser, because these were spoons with silver upon them, although not of the same quality as was represented, the pawnbroker received these spoons, and they were valuable, although the quality was not equal to what had been represented.

* The Queen against Roebuck, 1 Dears. and Bell, 24; the Queen against Sherwood, 1 Dears. and Bell, 251; the Queen against Bryan, 1 Dears. and Bell, 265.

Now, it seems to me it never could have been the intention of the Legislature to make it an indictable offence for the seller to exaggerate the quality of that which he was selling, any more than it would be an indictable offence for the purchaser, during the bargain, to depreciate the quality of the goods, and to say that they were not equal to that which they really were."

Next, in giving the judgment of the Court, the Lord Chief Baron POLLOCK made these observations, to which I invite your careful perusal:—"There may be considerable difficulty in laying down any general rule applicable to each particular case; but I continue to think that the statute was not meant to apply to the ordinary commercial dealings between buyer and seller; still, I am not prepared to lay down the doctrine in an abstract form, because *I am clearly of opinion that there might be many cases of buying and selling to which the statute would apply*—cases which are not substantially the ordinary commercial dealings between man and man. I think, if a tradesman or a merchant were to concoct an article of merchandise expressly for the purposes of deceit, and were to sell it as and for something very different even in quality from what it was, the statute would apply. So, if a mart were opened, or a shop, in a public street, with a view of defrauding the public, and puffing away articles which really possessed no value, there, I think, the statute would apply, but I think the statute does not apply to the ordinary commercial transactions between man and man."

Mr. Justice COLERIDGE, in expressing his con-

currence with the opinions of the learned judges already named, said—"It seems to me to be a safe rule to say, where it applies *simply to the quality*, and is only in the nature of an exaggeration on the one hand, or a depreciation on the other, which too frequently takes place even in tolerably honest transactions between parties, this is not the subject of a criminal proceeding." Two out of the twelve learned judges who formed the court when judgment was pronounced in this case, gave their opinions in favour of the conviction. Those very learned and estimable judges were Mr. Justice WILLES and Mr. Baron BRAMWELL. To give an abridgment of their opinions would be impossible without doing the learned judges great injustice, and to transcribe them at length would be too serious an encroachment on my limits, I must therefore content myself by saying that the conclusion to which they seem to arrive, in their most elaborate and carefully delivered opinions, is that the law is intended to apply to every species of fraudulent transaction in which, by false pretences, property is obtained. Notwithstanding, however, the individual opinions to which I have just adverted—entitled to the most profound respect (the result, unquestionably, of deliberate reflection), and emanating from men of the highest legal attainments—the law as laid down for our guidance may now be said to be that the statute does not apply to ordinary commercial transactions in which the misrepresentation relates merely to the *quality* of the goods bargained for, and which, as Mr. Justice COLERIDGE said, "is only in the nature of an exaggeration on the one hand, or a depreciation on

the other." But there we must stop: for, in the language of the Lord CHIEF BARON, "there might be many cases of buying and selling to which the statute would apply—cases which are not substantially the ordinary commercial dealings between man and man." And here I would take the liberty to suggest to those who peruse these pages with an honest desire to acquire a knowledge of the laws affecting their trade dealings, with a view, on the one hand, to protect themselves from imposition, and, on the other, to avoid even a semblanceof transgressing; that a more constant presence to the mind of, and sincere endeavour to act in conformity with, the golden rule "do as you would that others should do unto you," even in buying and selling, would conduce much to reciprocal confidence, to honest dealing, and to an unalloyed enjoyment of those legitimate profits of trade which are the just reward of perseverance and integrity.

And here I may as well tell you that the mode in which the pretence is made is wholly immaterial; whether by words, or by writing, or by mere acts unaccompanied by any words. If the false pretence be conveyed to the mind of the person imposed upon, it matters not what are the precise means by which it is effected. You might very naturally be under the impression that, unless the person effecting a fraud should *say* or *write* something false, he would not be amenable to the criminal law. This is not so, for a false pretence may be conveyed as well by other means as by speaking or writing. For example, if a man hand you a cheque, purporting to be signed by himself and drawn on a banking-

house, even although he say not one word to induce you to receive it, the mere uttering of the cheque conveys as completely as any words which he could employ the pretence that he has money lying in the bank, and authority to draw cheques thereon. Again, if a man with an intent to defraud, falsely pretend he is in a certain position in society, and thereby create credit for himself and obtain your goods or money, his so doing—as by dressing in the regimentals of an officer of the army or navy, or as a member of a university—constitutes a false pretence within the meaning of the law, although he do not say one word relative to his station in society. If the act of attiring himself in such garments were done with intent to lead persons with whom he sought to deal to believe him to be an officer or a member of a college, and consequently responsible for his purchases, and that they, acting upon such belief, had parted with their goods, such conduct, although unaccompanied by words, would render him amenable to the law for obtaining goods under false pretences. So if a man pay his addresses to a woman, and propose marriage, although he do not say in so many words, "I am a single man," yet his conduct sufficiently conveys that pretence, and if fraudulently done, and he thereby obtain money, he is amenable.

Three cases strongly illustrative of this point have been tried and decided. In one of them, a young man went to the shop of a tradesman in Oxford in a collegiate dress, bought goods, and ordered them to be sent to his lodgings. It turned out that he was not a member of the university, but had assumed the

college cap and gown for the purposes of deceit; and upon being tried for obtaining goods by falsely pretending that he was a member of the university, he was found guilty. It was decided that his presenting himself in the dress of a collegian was as much a pretence that he was so, as though he had said "I am a member of the University."*

The other case was that of a man named Jackson, who went to a tradesman, bought goods, and handed in payment a cheque which he drew upon a certain bank, but he did not make any verbal statement as to his means, nor did he say he had funds in the bank. It was afterwards discovered he had no money at the bank in question, and kept no account there. Upon being tried for obtaining goods by false pretences, he was convicted.†

In the third case, the prisoner paid his addresses to the prosecutrix, and obtained a promise of marriage from her, which she afterwards refused to ratify. He then threatened her with an action for breach of promise of marriage, and by this means obtained money from her. During the whole of the transactions the prisoner had a wife. On an indictment against him for obtaining money under false pretences, the Court held *that the fact of the prisoner paying his addresses was sufficient evidence for the jury on which they might find that he pretended he was a single man,* and so entitled to maintain his action for breach of promise. Such latter false pretence they held was clearly within the statute.‡

* The Queen against Barnard, 7 C. & P. 784.
† The King against Jackson, 3 Campbell's Reports, p. 370.
‡ The Queen against Copeland, C. & M. 516.

### II.—THE PERSON MAKING USE OF THE PRETENCE MUST KNOW IT TO BE FALSE.

It would be mere waste of time to trouble you with many observations under this head. Your own good sense will suggest that unless a man *know* that the statement he is making is false, no matter how untrue it be in fact, it would be an act of the grossest injustice to make him criminally responsible for the enunciation of that in respect of which he is himself in error. We can very readily imagine such a state of facts. A person has been for years in possession of a chain which he has always believed to be gold, and in that belief subsequently offers it for sale to you, representing it to be gold, and thereby obtains your money. It turns out to be base metal. You will see in an instant that it would be not only absurd but cruel, and in violation of every principle of justice, if this person were to be held criminally responsible for the misrepresentation by which you were deceived, for it was not false to his knowledge, nor was it made by him with any intent to impose upon you. Or, take a case which not unfrequently occurs. An evildoer desires to commit a fraud without incurring any personal risk. He employs some unsuspecting poor fellow who is seeking employment. He represents himself as a person of rank, and as such desires this man to go to your establishment and say Lord So-and-so had sent him for certain articles of jewellery. You detect the falsehood, and give the man into custody. It is quite true he has uttered a false pretence. He

has declared that Lord So-and-so had sent him to you for certain goods, whereas he has not been sent by any such person, but by a swindler whose dupe he has been made. But inasmuch as he did not *know* the statement to be false, it is quite obvious he is morally as well as legally blameless in the matter. The really guilty person is he who sent him. As I have already said, it would be mere waste of time to dwell at any length upon this head.

### III.—OF THE INTENT TO DEFRAUD.

If you have kept in mind the general observations contained in the first chapter, when we were inquiring into the general principles upon which our criminal laws are based, you need not now be more than reminded that, in relation to this offence as to that of larceny at common law, there must exist in the mind of the person obtaining your property, at the time he obtains it, a corrupt and fraudulent intention. It is maxim of our law that a "man is presumed to intend the necessary consequence of his acts;" but as in larceny, so here, there must be no doubt upon the point. Unless the deliberate and fixed purpose be to defraud, the offence cannot be said to be committed. Mr. Roscoe very plainly states it, "the *primary intent* must be to cheat and defraud."* But forasmuch as *intent* is as incapable of direct proof as is the question of knowledge of the falsity of a pretence, for the obvious reason that mortals cannot peep into the minds of their fellow-beings, the one like the other can alone be deter-

* Power's Rosc. 460.

mined by a careful consideration of all the facts of the case, coupled with the conduct of the accused. Two cases so strongly illustrate this, that I shall not occupy your time by any further remarks of my own, but lay before you a short abstract of each.

A pauper was indicted for having procured from the overseer of a parish, from which he received parochial relief, a pair of shoes, by falsely pretending that he had no shoes, and therefore could not go to work; upon which the overseer supplied him with a pair. It was proved on the trial that the statement was false, as the pauper had two good pairs of shoes. He was found guilty, but the case was considered by the judges, who held that it was not within the Act, the statement made by the prisoner being rather a false excuse for not working than a false pretence to obtain goods.* Here then you see the fallacy of the finding of the jury: the intent was clearly not to cheat the parish of a pair of shoes, but merely by means of a lie to be excused from doing work. In the other case A. owed B. a debt, of which B. could not obtain payment. C., a servant of B., went to A.'s wife, and got two sacks of malt from her, saying that B. had bought them of A., which he knew to be false, and took the malt to his master, in order to enable him to pay himself. It was held by Mr. Justice COLERIDGE that *if C. did not intend to defraud A., but only to put it in his master's power to compel A. to pay him a just debt,* he could not be convicted of obtaining the malt by false pretences.† C.'s act cannot for a moment be justified, but it is

* The King against Wakeling, Russ. and Ry. 504.

† Williams' Case, 7 C. & P. 354.

absurd to suppose that his *intent* was to *cheat* and *defraud* A.

IV.—THE OWNER MUST BE DECEIVED BY THE PRETENCE, AND PART WITH HIS PROPERTY IN CONSEQUENCE OF HIS BELIEF IN ITS TRUTH.

It is a self-evident proposition that unless you are imposed upon by the pretence made, and part with your property by reason of your firm belief in the truth thereof, it cannot be said your property was obtained from you *by means of the pretence.* But I must here again caution you against falling into the error that unless *all* the statements made by a person who obtains your property are false, he is not amenable. That is not so. It is sufficient if the actual substantial pretence, which was the main inducement to you to part with your money, was false; although some of the other statements made at the same time were true.* It would be absurd were it otherwise, for we generally find some portions of truth in every tale. I know of no means more likely to convey to your mind with rapidity and force the meaning and application of these rules than by framing and laying before you a supposititious case, such as may have occurred within your own observation: A customer whom you have long known, and in whose responsibility you have full faith, comes hastily into your counting-house, takes a letter from his pocket, says he has just received a very extensive export order from Australia, reads, from that which appears to be his correspondent's

* Queen *v.* Hewgill, 1 Dears. C. C. R. 315.—See Fry's case, p. 83.

letter, the description, quality, and quantities, and then proceeds to purchase from you, the goods named. The amount is, in all probability, considerably greater than that of any previous purchase; but the occasion—the order from Australia—justifies it, and without hesitation you supply the goods, and, in due course, they are delivered to him. In a few days afterwards you are startled by the information that your friend has procured a vast quantity of property from various other merchants besides yourself, in a similar manner, and having converted the whole into cash, at a great sacrifice, has suddenly disappeared. Here is a familiar instance of what may be termed a clever swindle. Of its character in a moral point of view, no doubt can be entertained. Neither is the swindler free from the penalties of the criminal law, in the event of his being made bankrupt. But our present purpose is not to ascertain for *what* particular offence he is punishable, but whether he is so for obtaining your property by false pretences? Let us apply the tests. 1. Was the pretence false in fact?—Yes. 2. Did he know it to be false?—Yes. 3. Was the intent to defraud?—Yes. 4. Did you part with your property principally in consequence of your belief in the truth of the pretence? Upon your answer to the last query depends the decision whether the offence be within the statute or not. If you parted with your goods, relying upon the apparent respectability and responsibility of your customer, and uninfluenced by his statement about the export order, then it is clear his offence is not, in point of law, that of obtaining goods by false pretences; for although you heard

his statement about a foreign export order, that had merely the effect of throwing you off your guard, and, by anticipation, satisfying your curiosity as to the reason for so large a purchase; for you cared not a rush whether the goods were for Australia or Manchester, so that you received your money when due. You knew your man; you had often sold him goods; you had no doubt of his solvency; and even if you had been told the next day that the goods were for Manchester, and not, as he had said, for Australia, you would have regarded his statement only as a mere "white lie" of trade to enable him to effect a better bargain; and if he had given you another order the next hour, you would have as gladly received and executed it as you had the former. However gross the fraud practised upon you, it would be absurd in such a case, and under such circumstances as those just supposed, to say that you had parted with your property upon the faith of the pretence about the export order to Australia. You did nothing of the kind. Although you believed most of what he said to be true, you relied not upon that, but upon your knowledge of the man. On the other hand, suppose your answer to the last query were this: I had long done business with him, and believed him to be a man of responsibility, *but* I should not have sold these goods without receiving some satisfactory reason for his requiring to make such an extensive purchase; and, in fact, I parted with the goods in the full belief in the truth, and on the faith, of his statement that he had received the export order from Australia; then it is equally clear that he would have obtained

your goods mainly *by means* of the false pretence, and his offence would be, within the meaning of the statute, obtaining goods by false pretences.

I assume that it is now well impressed upon your mind that your property must have been obtained from you *by means of the pretence:* for although such may be used for the express purpose of deceiving you, and thereby obtaining your property, yet, unless you really believe the pretences to be true, it cannot be said that you are deceived, or that your property is obtained *thereby*. Thus in a case which actually occurred but a very little while ago in Cambridgeshire, where a farmer paid to the prisoner a sum of money to which he knew the man was not entitled, it was held by the Court of Criminal Appeal that although the prisoner made a false statement to the farmer, knowing it to be false, and with the design to impose upon and defraud him, yet inasmuch as the farmer well knew the pretence was false, and only paid the money in order to prosecute the man, he had not been deceived, neither had his property been obtained *by means* of the false pretence. The facts were these:—A Mr. Free hired a man named *Mills* to cut chaff for him, and engaged to pay him twopence per fan for every fan he cut. After he had done his work, *Mills* demanded 10*s*. 6*d*., saying he had cut sixty-three fans. It so happened that Mr. Free, having his suspicions as to the fellow's honesty, watched him, and saw him carry eighteen fans of cut chaff from another heap, and add it to his own; and thus, although he had cut only forty-five fans, he sought to make it appear he had cut sixty-three, and so cheat Mr. Free

of 3*s*. more than he was entitled to. Mr. Free paid him the full sum he demanded, and then gave him into custody on the charge of obtaining 3*s*. by false pretences, and the jury found him guilty, but for the reasons I have already explained, the Court of Criminal Appeal quashed the verdict.*

Having now discussed the principal ingredients which contribute to constitute the offence of obtaining property by false pretences, I shall next lay before you such a selection of the leading cases which have been reported as shall best serve to illustrate the various points we have had under consideration.

The particulars of the first case cannot fail to be of peculiar interest to you, in a commercial point of view. The prisoner, *Archer*, called upon a cloth merchant in Leeds, and represented to his clerk (which in point of law is a representation to the principal, if the clerk have full authority to act for and on behalf of his employer) that he (Archer) had two sons in the United States, and that he knew a Mr. Smith of Newcastle, an ironmonger, who was in the habit of going twice a year to New Orleans, to take goods to his (Archer's) sons; that Smith was a man to whom he could trust a thousand pounds; and that he then wanted for this person, Smith, of Newcastle, some cotton-warp cloths. Upon the faith of this statement, Mr. Hirst, through his clerk, sold the prisoner the goods named. The jury found a verdict of *guilty*, but the opinion of the Court of Criminal Appeal was taken as to whether this was a *pretence* within the meaning of the statute; and it was further contended by counsel that the goods were

* Mills's case, 1 D. and Bell, 205.

sold to the prisoner, and not to the supposed John Smith, and if that were so, Archer was entitled to an acquittal, although the contract of sale between him and Mr. Hirst was the result of his false statement. The Lord Chief Baron POLLOCK, pronounced the judgment of the Court in these words:—"This conviction was right. If a man says, 'I want goods for a certain house, and I mean to send them to that house, sell them to me,' that would not be a representation of an existing fact; but here there was a false representation that the prisoner was connected with a person of opulence, and we all think that that is enough to sustain the conviction, it being a misrepresentation of an existing fact, upon the faith of which the property was obtained."*

By falsely pretending that *a house had been built upon a certain piece of land* near Sheffield, a man named *Burgon* obtained from a solicitor a *loan* of 80*l.* Mr. Fretson (the prosecutor) said in his evidence, that the prisoner had employed him professionally to prepare a contract between him and a builder for the erection of a house and workshop near Sheffield. That he called upon him again after an interval of some months, and asked for the loan of 80*l.*, stating that the builder had finished the house and workshop, but that he (Burgon) was short of money to pay for extras, and that he should have the lease in a day or two. In a few days he did bring the lease, which had a plan upon it, and he left it with Mr. Fretson, saying, "I have built a very capital house on the land, and some workshops, and it is a very nice piece of land; can you lend me

* The Queen against Archer, 1 Dears. C.C. 449.

the 80*l.* on it without putting me to the expense of a formal mortgage? They are worth near 300*l.*, and I hope you will save me the expense of a mortgage." The prosecutor consented to this proposal, and lent the prisoner the money on the deposit of the lease, and drew up what is called a memorandum of deposit, which the prisoner signed, and received from Mr. Fretson a cheque for the money. Some weeks afterwards Mr. Fretson discovered that the whole tale about the house being built on the land specified was false, and instead of that being so, no house had been built thereon, but on another and adjoining piece, on which prisoner had raised 250*l.* on mortgage from another solicitor. Upon these facts being proved, the jury convicted the prisoner of obtaining the monies of Mr. Fretson by false pretences, and after a very elaborate argument in the Court of Criminal Appeal, in which it was urged that the money was advanced on the security of the lease, and not on the faith of the prisoner's statements; that it was a mere loan, and not the subject of a charge within the meaning of the statute; that the prosecutor could easily have ascertained for himself whether the statement of the prisoner was true, and that as he had not exercised common prudence he was not entitled to complain. The Court, however, overruled all these objections, and affirmed the conviction.*

The following case is one of interest to the shopkeeper, and as you may be curious to know what is the usual form of an indictment for *cheating*, and it happens to be in the report of the case, I

* The Queen against Burgon, Dears. and Bell, 11.

transcribe an extract, citing the principal parts. After the preliminary technical statements, it proceeds in these words to charge the offence—"That he (*Abbott*) having in his possession divers pounds weight of cheese, of little value, and of inferior quality, and contriving and intending to cause it to be believed that the said cheese was of good flavour, and excellent quality, and contriving and intending to cheat one William Bennett out of his money, on, &c., at, &c., unlawfully and knowingly did falsely pretend to the said William Bennett that certain pieces of cheese called "tasters," which he the said prisoner then and there delivered to the said William Bennett, were part of the said cheese that the prisoner then offered for sale, and that the said cheese was of good and excellent quality, flavour, and taste, and that every pound weight was of the value of sixpence halfpenny; by means of which said false pretences the prisoner did then and there unlawfully and fraudulently obtain of and from the said William Bennett one piece of the current gold coin [describing the money] of the monies of the said William Bennett, with intent to cheat and defraud him of the same; whereas the said pieces of cheese which the prisoner delivered to William Bennett were not part of the said cheese which the prisoner offered for sale; and whereas the said cheese was not of good and excellent quality, flavour, and taste; and whereas every pound weight of the said cheese was not of the value of sixpence halfpenny, which the prisoner well knew, against the statute," &c.

It was proved that the prisoner kept a cheese-stall at Fareham fair, and sold to the prosecutor,

William Bennett, a quantity of cheese, for which he paid the prisoner the sum of 2*l.* 1*s.* 8*d.*, being at rate of sixpence halfpenny per pound. It was further proved, that at the time the prisoner offered the cheeses for sale he bored two of them with an iron scoop, and produced a piece of cheese which is called a "*taster*" at the end of the scoop for the prosecutor to taste, and the prosecutor did so. The "*taster*," however, which he so tasted, *had not, in fact, been extracted from the cheese offered for sale;* but was a "*taster*" of *another and superior kind of cheese,* which the prisoner had privily and fraudulently inserted into the top of the scoop. The prosecutor would not have bought the cheese unless he believed that the taster had been extracted from the cheese which had been so bought and delivered to him, and of which he continued ever after in the possession. No precise evidence was given of its value; but it was of a kind very inferior in value to the taster. The jury found the prisoner *Guilty,* but as his counsel had raised several very ingenious objections during the trial, the learned Judge, Mr. Justice WILLIAMS, reserved the case for the consideration of the fifteen judges, who afterwards upheld the conviction.*

A false pretence as to the *weight* or *quantity* of goods sold, made with intent to defraud, is within the meaning of the law. *Sherwood* was a coal dealer, and sold to a woman a load of coal, which he well knew weighed only 14 cwt. He, however, told her that the coal weighed 18 cwt., and the woman believing his statement paid him for 18 cwt.

* Queen against Abbott, 1 Den. C.C. 276.

On a subsequent occasion he falsely and fraudulently represented a load to be of the weight of 23 cwt., whereas it was only one ton, and so obtained payment in the first case for 400 cwt., and in the second for 300 cwt. of coal, which he never delivered. Amongst other suggestions, it was ably urged on the prisoner's behalf that this was a case of buying and selling, and a mere overcharge in respect of quantity; but the Court of Criminal Appeal decided that the man was properly convicted. Lord CAMPBELL said, "I have no doubt or difficulty whatever as to what our decision ought to be. The offence proved seems to me to be clearly within *the words and the spirit* of the Act of Parliament." And Lord Chief Justice COCKBURN in giving his individual opinion, said, after referring to other cases, "I think that looking to the authority of these cases, and the language of the Act, a fraudulent representation as to the quantity of things sold will, under some circumstances, constitute a false pretence within the meaning of the Act of Parliament."*

That a false pretence as to the *mere quality* of goods, made in the ordinary course of buying and selling, is *not* within the meaning of the statute was decided in *Bryan's* case, argued before the Court of Criminal Appeal during the past year. In the early part of this chapter, I gave you copious extracts from the opinions of the judges on this very important question, and I need not here repeat them.†

A pawnbroker lent a man named *Roebuck* 10*s.* upon a chain which he deposited as a pledge, and

* The Queen against Sherwood, 1 Dears. and Bell, 251.

† See p. 85.

which *the prisoner represented to be silver*. The pawnbroker did not rely upon the prisoner's statement that the chain was silver, but tested it himself, and it withstood the test. In this case you will observe the money was not obtained *by means of the pretence*, because the pawnbroker relied upon his own judgment, and the prisoner was acquitted of the charge of *obtaining* the money, but found guilty, under Lord CAMPBELL'S Act, to which I have before called your attention, of an *attempt* to obtain. The case was referred to the Court of Criminal Appeal, and in affirming the propriety of the verdict, Lord CAMPBELL said, "The Queen against *Ball* appears to me to be an authority expressly in point, and I entirely approve of the principle upon which that decision may rest.* Under such circumstances the party who has succeeded in defrauding the pawnbroker, the money being advanced upon the faith of the false representation, comes clearly within the statute, for by representing as an existing fact that which he knew not to be an existing fact, he obtained the money, 'with intent to defraud him of the same.'"†

In the following case a man named *Dent* obtained 5*l.* from a Friendly society, called the "George and Dragon," of which he was a member, by falsely *pretending that his wife was dead.* It appeared that the defendant was a free member of the society, and by one of the rules every such member whose wife

* Ball's Case, Car. and M., 249. In that case a person obtained money from a pawnbroker by falsely representing an article to be silver.

† The Queen against Roebuck, 1 Dears. and Bell, 24.

died was entitled to 5*l.* out of the society's funds. The defendant told the clerk of the society that his wife was dead, and was then told by him that he must produce a certificate of her burial. Subsequently, at a meeting of the stewards and clerks, the defendant produced a certificate to that effect, and again told the clerk that his wife was dead. On this he was given 5*l.* Evidence was given that defendant's wife was alive, that the certificate was fabricated by the defendant, and that the statements contained in it were false. The prisoner was found guilty.*

The following is a case where a secretary of a Friendly society obtained money from a member by falsely pretending that the member owed a larger sum than in fact he did. *Woolley* was secretary to the "Earl of Uxbridge Lodge of Odd Fellows;" Joseph Burton was a member of the lodge, paying a contribution of 9*d.* a fortnight, and was at the time indebted to the society to the amount of 2*s.* 2*d.* only. The prisoner's duty was to receive money from the members. It appeared he gave Burton a writing in the following words—

"Sir and Brother,—I hereby give you notice that you owe to your lodge for contributions, &c., the sum of 13*s.* 9*d.*, due on the 20th instant.

"Yours respectfully,
"William Woolley."

Burton opened the paper and said, "Do I owe that amount, 13*s.* 9*d.*?" Prisoner replied, "You do." Burton then paid him 14*s.* and received 3*d.* in change. The prisoner was found guilty, and it was urged

* The Queen against Dent, 1 C. and K. 249.

before the Court of Criminal Appeal, on behalf of the prisoner, that there was no false pretence within the statute, as the fact of how much was due was as much within the knowledge of Burton as of the prisoner. The Lord Chief Justice CAMPBELL said, "The person making the false pretence knows nothing is due: the other party may know it or not. If he knows it, and parts with his money, the money is not obtained by means of the false pretence, but if he does not know it, then it is." The counsel for the prisoner suggested to the Court the query, whether, if a tradesman, knowing that nothing is due to him, were to say to his customer that 5*l.* was due, and thereby gets that amount, whether it would be a case within the statute? To which Lord CAMPBELL replied—"If you ask my opinion, I should say that it would. What is the difference whether in order to ascertain the truth, the party to be defrauded should inquire of a third party, or go to his own counting-house and see by his books what money he has paid, and thereby ascertain if it was due." And Mr. Baron ALDERSON added—"All persons who send letters asking charity, and who obtain money thereby are, if their statements are false, liable to be indicted for obtaining money by false pretences." This, therefore, will be a convenient place to introduce an example of a very clever false pretence, by means of which charity was obtained.

*Jones* was indicted for obtaining by false pretences a Post-office Order, for the payment of three pounds, of John Collinridge, with intent to cheat and defraud him, &c.

It was proved in evidence that the prosecutor resided at Sunbury, in Middlesex, having a house also in Bath, but, that at the time of his receiving the letter hereinafter first mentioned, he was at his house at Sunbury, and the prisoner at Vauxhall-road, in the same county; and with respect to the first charge, that the prisoner wrote at his residence the letter, of which the following is a copy, with intent to defraud the prosecutor, and assumed a name to which he had no right—viz., that of Dr. Scott, subscribed to the letter.

"GRAVESEND, *July 30th*, 1849.

"SIR,—Permit me to address you in a case of charity, at the earnest entreaty of James Brewer, a young man whom you have been very kind to upon several occasions, and some months ago you gave him £1 3*s*. to take him to Leamington—he was ordered here for the benefit of sea-bathing, but the air being too keen for his delicate frame, he has been advised to endeavour to gain admission to the Consumption Hospital, Brompton, near London. He is in very distressed circumstances, and has no means of paying the fees of that institution, and is also indebted here to his landlady for board, &c. Your kindness to him before induces him to hope that you might once more render him some little assistance, to enable him to make up fifty shillings, all that he is deficient of. I have taken more than usual interest in his case, having given him some linen, and £1 10*s*. in cash, which is as much as my limited means will admit me to do. The sad intelligence of a death in my family obliges me to leave home in a

few hours for Scotland, and will be absent for some weeks, therefore you will be pleased to return an answer to the poor youth himself, along with the enclosure, which is of importance to him—addressed, 'James Brewer, Post-office, Gravesend, Kent, to be left till called for;' and I have instructed Miss Scott, my sister, to acknowledge the receipt for him. Trusting the motive which actuates me, complying with the request, will be deemed an apology,

"I am, sir,

"Your obedient servant,

"JNO. H. SCOTT, M.D.

"To John Collinridge, Esq.,
Bath."

The prisoner delivered the same to an accomplice, at his residence in Middlesex, with instructions to put it in the Post-office at Gravesend, to be there posted; that the same was posted accordingly, and duly received by prosecutor in Middlesex, it having been forwarded from Bath, in the county of Somerset, to him at Sunbury; and he, thereupon, believing the story told in the said letter to be true, and that it had been written by a Dr. Scott, obtained a Post-office Order at Sunbury for the sum of 3*l.*, as laid in the indictment, in favour of James Brewer, and having enclosed the same in a sealed envelope, addressed, "James Brewer, Post-office, Gravesend, Kent," put it into the Sunbury Post-office, where it was transmitted by course of post to Gravesend, in the county of Kent, and there received by the accomplice (under the prisoner's instructions), who got the money for the order, and gave half the proceeds to

the prisoner at his residence in Vauxhall-road, keeping the other half himself. The pretences were each and every of them false to the prisoner's knowledge, and the letter was written with intent to cheat and defraud the prosecutor, and obtain money from him, and the name of Scott was assumed for that purpose.

With respect to the second charge, it was proved that prisoner wrote and posted the following from Bath :—

"BATH, *August* 10*th*, 1849.

"SIR,—It is a most unusual thing for me to address an individual to whom I am an entire stranger; but circumstances over which I have no control almost compel me to make my present situation known, and having received this morning a note from Dr. Harrison, who was an early friend of my late father, the Rev. W. C. Collinridge, of Newcastle, intimating that a namesake of mine was residing at Bath, and under an impression (as our name is by no means common), I have ventured to address you, thinking you might spring from the Northumberland family of the Collinridges. I know of no relations in the world living bearing my name except an only brother, now living in Hexham, and several sisters married, who of course do not take the name now. I have been bred to mercantile pursuits of commerce, and for many years resided at Cape St. Mary's, river Gambia, Western coast of Africa, where I lost in one night, by the upsetting of a shallop, or small decked vessel, at the mouth of the river Nuno, the entire saving of many years of industrious, but laborious, toil, amounting to 2750*l.*, in one of the most unhealthy climates in the world; and what is

worse than the mere loss of wealth, the burning heat of the torrid zone has so injured my constitution that, at the early age of thirty-four, I have been compelled to relinquish a good situation which required some activity. Since my return to England I have for some time past been endeavouring to obtain a situation in some of the milder West India islands, Madeira, or the south of Europe, with a view of re-establishing my health; but all endeavours have proved unavailing. The medical profession have recommended me to try the benefit of the Bath waters, but I am sorry to say I have found no benefit. My funds are almost, nay, I may say wholly expended, and I have not a single friend here to whom I may appeal in confidence. Upon beginning to write this it was my intention to have asked you to advance me a small sum as a loan, that is if you had any knowledge of our family in the North, but I will refrain from asking that favour, for if you will oblige me with a loan, I have no prospect in the world of repaying it at present; and if it is in your power to assist a ruined merchant in ill-health, I will feel truly grateful. It must be as a gift, for from the tenor of my brother's letter it appears his means are limited, and I have no prospect there except casual assistance. Read this letter, and you will see his position and mine. He sent me 5*l.* in June, and having an aged mother to maintain, and a large family, upon his small practice, being by profession a surgeon, I really cannot summon resolution to apply to him, at least for a time. The enclosed letter you will be pleased to return to me, as also the note which you will perceive is

signed by the Archbishop of York (signed Ebor), I presume the Latin name for that city; and as I am invited to spend a day with a family in Chippenham, some twelve miles distant, you will be pleased to return them to me there, addressed as below.

"I am a poor one, Mr. Collinridge, to press for a favour. I have always through life been placed above it, and my distresses are not the less, or the privations which I have undergone, and now silently undergoing, are not the less keen because I do not enlarge upon them; but as I have addressed you in confidence, I will here state that if you can render me any pecuniary assistance, without injury to those who may have strong claims upon you and equally necessitous, I will be for ever grateful for the least aid. An early answer will oblige; and I may here mention it was your domestic in Pulteney-street who gave me your address, having called this morning in the hope of seeing you personally. Wishing you, sir, a long enjoyment of peace and tranquillity,

"I remain, sir,
"Your obedient servant,
"JOHN HENRY COLLINRIDGE.

"Address, Mr. J. H. Collinridge, (to be called for,) late from Africa, the Post-office, Chippenham, Wilts.

"To John Collinridge, Esq., (of Bath) Sunbury Villa, Sunbury, Middlesex."—J. H. C.

It was proved that the above was duly received at Sunbury by the prosecutor, who thereupon, believing its contents to be true, and that it was

written by a person bearing the name of John Henry Collinridge, enclosed one half of a 5*l.* note in a letter addressed to J. H. Collinridge (to be called for), late from Africa, Post-office, Chippenham, Wilts, and forwarded it by post from Sunbury to Chippenham, in the county of Wilts, where it was received by the prisoner, who thereupon requested the prosecutor, by letter, to forward the second half of the note by post to his residence in Middlesex, and which the prosecutor, who was then still at Sunbury, and wrote from thence, accordingly did, and the prisoner received it there, and by letter duly acknowledged the receipt of such half note there. These facts having been proved, and the falsity of the pretences established, the jury found the prisoner guilty.

In the following case *Peter Adamson* was charged with falsely pretending to one John Heron that he had *obtained from Lord Stanley an appointment* as emigration agent at Port Philip, which was worth 600*l.* a year, and that for 200*l.* he would give John Heron one-third of the emigration agentship; and that he, the said John Heron, would be sure to have back his 200*l.* out of the emigration agentship the first year, and that by means of those false pretences he obtained 200*l.* from Heron. The pretences and their falsity were clearly proved; but it also appeared in evidence that the defendant had urged the prosecutor to become his partner, and engaged that if the prosecutor accepted his proposal of a partnership, and advanced the 200*l.* as a bonus, the prosecutor should have a third of the emigration agentship, and of the other business that he (the defendant) would

have in the colony; and that on the prosecutor expressing a wish to write to consult his friends in Scotland, the defendant refused to allow him to do so, and also refused to allow him to consult his cousin in London, or any one else, on the subject of the proposed partnership. It was proved by the prosecutor that he was induced to accept the proposal of the partnership on the assurance of the defendant that he then had the appointment of emigration agent. It further appeared, that after the false pretences stated in the indictment had been made, and before the prosecutor parted with his money, a partnership deed was, at the defendant's instance, prepared by the defendant's solicitor, and executed by both the prosecutor and the defendant. Various objections were taken on behalf of the prisoner, but the jury found him guilty, and the legal questions raised were subsequently argued before the Judges, and the propriety of the conviction affirmed. Here you see the fact of a partnership deed having been executed made no difference; the whole transaction from the commencement was one of fraud on the part of the prisoner.*

A false pretence that a man *has money in a certain bank*, effected by writing a cheque and handing it in payment, is illustrated by the case of a man named *Parker*, who went into a jeweller's shop at Gloucester, and, having looked at different articles, chose a watch and chain, the price of which was *26l. 5s. 9d.* He said he wanted them as a birth-day present for his wife, and asked the lowest price for cash. Mr. Mann, the jeweller, agreed to

* The Queen against Adamson, 1 C. and K. 192.

take 25*l.* down. Parker thereupon asked for paper to draw a cheque. He was asked on what bank? to which he replied, "on a Bristol bank." He then wrote the cheque, and while doing so requested Mr. Mann to keep it for about ten days. Mr. Mann agreed to do so, and Parker post-dated it accordingly. Parker then left, taking away the watch and chain. It was subsequently discovered that Parker never had any account at the bank in question, and further, that he pawned the watch and chain soon after he obtained them. He was convicted by the jury, and after argument before the judges the conviction was affirmed.* The false and fraudulent *pretences* in this case were that he had money in the bank, and that the cheque was a "*good* and genuine order" of the *value* of 25*l.*

A carrier had been convicted of obtaining 16*s.* by falsely pretending that he had carried certain goods to J. Barrow, and thereupon, and as his reward for so carrying the goods, demanded, and obtained from J. Barrow the above sum, and upon the question being raised whether a false representation that he *had carried goods* was a sufficient pretence of a fact, it was held by the Court that it was, and that the prisoner had been properly convicted.†

A case of very considerable importance to manufacturers, and others having persons in their employment, the payment of whose wages they are obliged to entrust to a foreman, was tried many years ago at Gloucester Assizes, in which the prisoner was convicted under these circumstances.

* The King against Parker, 7 C. & P. 528.

† The King against Airey, 2 East, 34.

*John Witchell* was indicted before Mr. Justice LAWRENCE for obtaining money from A. and H. Austin by false pretences, and it appeared in evidence that the Austins were clothiers at Wooton-under-Edge; that the prisoner was a shearman in their service, and employed to superintend the other shearmen, and to take an account of the persons employed, and of the amount of their wages and earnings; that at the end of each week he was supplied with money to pay the different shearmen by the clerk of the prosecutors, who advanced to him such sum as, according to a written account or note delivered to him by the prisoner, was necessary to pay them. The prisoner was not authorised to draw from the clerk for money generally on account, but merely for the sums actually earned by the shearmen; and the clerk was not authorised to pay him any sums except what he carried in in his account or note as the amount of what was due to the shearmen for the work they had done. It appeared that the prisoner on the 9th September, delivered to the prosecutor's clerk a note in writing in this form — "9th September, — Shearmen 44*l.* 11*s.* 0*d.*," which was the common form in which he made out his account of the amount of their week's wages. And it appeared further by a book in his handwriting, which it was his business to keep, of the men employed, of the work they had done, and their earnings, that there were in it the names of several men who had not been employed, who were entered as having earned different sums of money, and false accounts of the work done by those who were employed, so as to make out the

sum stated in the note to be due to the shearmen. The jury found the prisoner guilty; but sentence was respited in order to take the opinion of the judges, who finally agreed on this principle, that *if the false pretence created the credit* the case was within the statute, and they considered that in this case the defendant would not have obtained the credit but for the false account which he had delivered in, and therefore that he was properly convicted. The defendant, as was observed by one of the judges, was not to have any sum that he thought fit on account, but only so much as was worked out.*

The following case was characterised by great ingenuity and plausibility, quite calculated to deceive a person under the circumstances in which the prosecutrix was placed. It appeared from the evidence of the daughter of Mr. Thomas Penrhyn, that her father kept a house for the sale of beer, and had been fined 2*l.* by the magistrates at Shrewsbury, and that the defendant on that occasion appeared as attorney for the witness's father. The witness further said,—"The defendant called on my mother on the 6th of August, and said he had been with a person from Frankwell to Mr. Bather and Mr. Richard Loxdale, which person had been fined 2*l.* for a similar offence, and he had prevailed on Mr. Bather and Mr. Richard Loxdale to take 1*l.* instead of 2*l.*; and if my mother could make it convenient to give him a sovereign, he would go and do the same for her. My mother gave him a sovereign. She asked him if he would take a glass of ale; he

* The King against Witchell, 2 Russ. 291.

said he never drank ale, and my mother gave him two sixpences to get him a glass of something else. In the course of an hour he came back and said, 'Mrs. Penrhyn, I have succeeded, but I had to wait, as Mr. Bather was engaged, but he gave me a note to Mr. Loxdale, and all is right.' My mother asked him what she was indebted to him; he said that if she would give him eighteenpence, with the shilling he had had, he was satisfied. She gave him the eighteenpence." It was proved by Mr. Bather and Mr. R. Loxdale, that the defendant never made any application to either of them respecting any person in Frankwell, or either of the fines, and that no note was sent by the defendant from Mr. Bather. It was also proved that both the persons residing at Frankwell, and the present prosecutor, Mr. Penrhyn, had been obliged to pay the full fines of 2*l.* each. Upon this evidence Mr. Justice PARK said, "under the guise of an attorney the money was procured. I hold it to be a case clearly within the statute:" the jury found the prisoner guilty.

Another description of fraud was successfully practised by four men upon a person named Thomas. These men pretended to Thomas that Young had made a bet of five hundred guineas a-side with a colonel in the army at Bath, that a person named Lewis would run ten miles within one hour. They further pretended that two of their party shared two hundred guineas of the bet, and the other two one hundred guineas each; and by means of these false pretences they obtained from Thomas a sum of twenty-five guineas. The whole story was a mere fabrication to deceive and defraud Thomas, and the

whole four were convicted and sentenced to seven years' transportation.* The *pretence* in this case, and that which induced Thomas to part with his money was, that a *bet had been made* and was then pending. In this case it will be observed four persons were charged with the offence, and all found guilty. This, therefore, is illustrative of that which I have already told you, that all present aiding in the commission of an offence are equally guilty. And in a case in which one of the persons charged was wholly absent when the pretence was uttered, the judges held that if the absent person concurred in, and gave his assistance to the others in the commission of the offence, he was equally guilty with his colleagues, although he were absent at the time of the uttering of the pretences.

*Bloomfield* was charged with obtaining five shillings by means of falsely pretending he was a certain person, and on the trial, on the Oxford Circuit, in 1842, Mrs. Palmer, the wife of the prosecutor, proved—"On the 4th of February the defendant came to our house; he said, 'I am a gentleman come from Oxford to give advice to poor people, for I understand the parish doctor is severe to the poor.' I asked him, 'are you Mr. Hitchings?' and he replied, 'I am; yes, yes.' I then asked him if he was the same person that had cured Mrs. Clarke at the Oxford Infirmary, and he replied, 'I am.' I had a child in my arms; the defendant looked at the child's eyes, and said that the child would lose them in less than a month, and he asked me if I would go to the expense of two bottles of stuff for the child, at 5*s.* 6*d.* a bottle, which would

* The Queen against Moland and others, 2 Moo. C. C. 276.

be 11*s*. I said I could not afford it; he then asked if I would go to the expense of one bottle, which would be 5*s*. 6*d*. I said, 'If you think my child would lose its eye, I will go to the expense of one.' The defendant asked for a bottle, which I gave him. I went up stairs, and on my return I saw something in a yellow bottle. My husband gave the defendant a sovereign, and the defendant gave him in exchange two crown pieces and two half-crowns, saying he would let us have the stuff for 5*s*." George Palmer, the prosecutor, stated that Mrs. Clarke, who was now dead, was his grandmother, and that he would not have given the defendant the sovereign, or have bought the stuff of him, if he had not believed that the defendant was Mr. Hitchings. It was proved by the Rev. W. S. Bricknell, that he knew Mr. Hitchings, who was an eminent surgeon, and that defendant was not Mr. Hitchings.

In summing up the case to the jury, the learned judge, Mr. Justice Cresswell, said, "The questions for you to consider are these—did the defendant falsely represent that he was Mr. Hitchings, and did he, by so falsely representing, obtain this money? If you are satisfied that he did so, you ought to find him guilty:" which the jury did.*

A case, the like of which has probably frequently occurred, and may again, was that of a foreign Count, who called upon Sir J. Broughton, and represented to him that the Duke de Lauzun had entrusted some horses to him to convey to London; that he had been detained on the voyage by contrary winds, and had spent all his money. Sir J. Broughton was in-

* The Queen against Bloomfield, Car. & Marsh, 537.

duced by these representations to advance some money to him; but upon inquiry the whole story turned out to be a fiction. He was tried and convicted, the court holding that it was a case of obtaining Sir J.'s money by false pretences.*

The case of *Catherine Coleman* is worthy of attention, inasmuch as it is just such as may occur frequently. This person went to a tradesman's house, and said she came from a Mrs. Cook, a neighbour, who would be much obliged if he would let her have half a guinea's worth of silver, and that Mrs. C. would send the half guinea presently. The prisoner obtained the money, but never returned. This was declared by the court to be obtaining money under false pretences, the statement that she had been sent by Mrs. C. being a sufficient *pretence;* but the woman having been indicted for *theft,* the jury were obliged to acquit her.

A person named *Crossley* had accepted a bill drawn on him by the prosecutor for the sum of 2,638*l.*, being indebted to him in that sum. The bill was put into circulation, and when it became due, the prosecutor asked the prisoner if he was prepared to pay it, to which he replied, *he had sufficient funds all but* 300*l.*, which he hoped to borrow. The prosecutor lent him the sum, but the prisoner, instead of taking up the bill, applied the 300*l.* to his own purposes, and suffered the bill to be dishonoured, and the prosecutor subsequently had to pay it. It was proved that the prisoner at the time was not in possession of the balance, but was in insolvent circumstances. Upon its being contended that this

* The King against Count Villeneuve, 3 T. R. 104.

was not a false pretence within the statute, Mr. Justice PATTESON said, "if the jury are satisfied that the prisoner fraudulently obtained the money from the prosecutor by a deliberate falsehood, averring that he had all the funds required to take up the bill, except 300*l.*, when in fact he knew that he had not, and meaning all the time to apply the 300*l.* to his own purposes, and not to take up the bill, it appears to me they ought to convict."

### V.—THE PROPERTY OBTAINED MUST BE SUCH AS IS CONTEMPLATED BY THE STATUTE.

The property to which the statute refers is a *chattel, money,* or *valuable security.* I have already given you an explanation of the terms "chattel" and "valuable security:" "money" requires no definition. Anything which does not come within one or other of these denominations is not *property* within the meaning of the statute. So where a man obtained *credit* with a banking firm by means of false representations, it was held that he did not obtain *property* within the meaning of the statute. It is to be regretted that the law does not reach a person under these circumstances, for his turpitude is quite as great in obtaining *credit,* and thereby *money,* as if he obtained the money in the first instance.

Upon the principle that no "property" was obtained, until very recently the criminal law did not reach a person who by fraud obtained your signature to a promissory note, bill of exchange, or other valuable security. Sad disclosures have taken place

within the last few years, wherein young men of property have been induced, by the fraudulent contrivances of designing swindlers, to affix their signatures to bills in the expectation that they would be discounted. The ordinary fate of such silly people is well known: they were successfully sued by a confederate, calling himself a *bonâ fide* holder, and as against whom, unless very rarely, there could be no defence to the action. The following are instructive instances, and should serve to caution you how you affix your name to documents:—

A young gentleman of property, the son of a baronet, being in want of money for a temporary purpose, in an evil hour read the following advertisement in the *Morning Post*:—

"£20,000.—Money to Lend.—A gentleman retired from business has this sum unemployed, with the addition of a larger one in the funds, ready immediately to lend upon the promissory notes, bills of exchange, or other good personal security of gentlemen, or persons of respectability (either in one or more sums), who require but temporary assistance, and who feel desirous to avoid the expense of effecting mortgages on their property. Terms for short periods, four-and-a-half per cent. Particulars, stating amount required, time, and every other information, are requested to be made in the first instance by letter, post-paid, to ——, will be received in strict confidence, and meet early attention, if approved."

This young gentleman, on the trial of *John Minter Hart*, for stealing ten bills of exchange, for 500*l.* each, said:—"In May last I had occa-

sion for a sum of money: I saw an advertisement in the *Morning Post*. I wanted from 1000*l*. to 5000*l*. I sent a letter to the address named in the advertisement. [I purposely omit names, &c.] After sending that letter I saw the prisoner at the Swan Inn at Alton, Hants, which is eight miles from my residence. I asked him if he could accommodate me with 1000*l*. or 5000*l*., and upon what interest. He asked me who I was? I told him I was the son of Sir ———, and that I had 60,000*l*. in the funds, upon which I wished to raise money. The 60,000*l*. was vested in trustees, and not in my own name. It might form a security, but could not be taken out and sold. He told me that he thought he could accommodate me with the 5000*l*. I asked what rate of interest would be required. He said I should have it at 6*l*. per cent., and that I might keep the money as long as I chose, provided that I paid the interest half-yearly. *He produced ten blank stamps and asked me to accept them.* He produced the stamps from his pocket-book: he did not say what was to be done with them, nor did he give any reason why I was to accept them. *I wrote on each of them the words, 'Payable at Messrs. Praed and Co., 189, Fleet-street, London,'* and omitted to sign my name. Nothing was written on the stamps at that time but the words I wrote. I did not know what was to be done with these papers when I had delivered them to him. I did not authorize him to do anything with them. I do not remember his mentioning anything that was to be done with them. The prisoner wrote upon each of the stamps 500*l*. He asked what sum they should be for? and said,

I think we will make them 500*l.* each. He wrote 500*l.* in figures on each bill."

The prosecutor further said,—"In consequence of a letter I received from prisoner, I again saw him at Alton. He said I had omitted to sign my name. He again produced the ten pieces of paper. This was several days after I had given him the papers. I signed them and gave them to him again. He said he would send the money in a few days by the mail. The word 'accepted' was written on each of them by me, when I signed my name." The prosecutor added, "that he never received one farthing for his bills, which were in the aggregate for 5000*l.*" Upon the trial at the Old Bailey, in 1833, the Judges forming the Court were Mr. Justice LITTLEDALE, Mr. Baron BOLLAND, and Mr. Justice BOSANQUET, and they all concurred in directing an acquittal, on the ground that it could not be said the prisoner stole any *property* belonging to the prosecutor, for the stamped pieces of paper which the prisoner had provided were never in the possession of the prosecutor in such a way as to make them his property.* And thus this impudent swindler escaped the hands of justice.

So in the case of a man named *Smith*, who, professing to be about to pay to the prosecutor money which he was indebted to him, put a receipt stamp on the table, and told the prosecutor to write a receipt for the money, which he did, and while so doing the prisoner pulled out a lot of money from his pocket, as if about to pay it over, but as soon as

* The Queen against Hart, 7 C. & P. 652.

the receipt was written he took it up, put it in his pocket, and walked out of the room without paying the money. The prosecutor went after him and demanded his money, but the only reply he received was, "Oh! it's all right." And upon a subsequent demand for the money the prisoner produced the receipt as evidence that he had paid the prosecutor. Smith was tried and convicted for stealing this receipt, but the Court of Criminal Appeal quashed the verdict, as it could not be said the *receipt* was the *property* of the prosecutor.* And so in a very recent case, where the prosecutor had been induced by fraud to accept a bill of exchange, the Court, on the trial of the prisoner for obtaining the bill by false pretences, held, as in *Hart's* case, the *bill was the prisoner's*, the prosecutor had no property in it, and therefore it could not be said the prisoner had *obtained* it.†

The legislature during the last session made another move in the right direction, by passing a statute to reach such persons. It is in these words:—

"If any person shall by any false pretence obtain the signature of any other person to any bill of exchange, promissory note, or any valuable security, with intent to cheat and defraud, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be sentenced to penal servitude for the term of four years, or to suffer such other punish-

* The Queen against Smith, 2 Den. C.C. 449.
† The Queen against Danger, 27 L.J.M.C.

ment by fine or imprisonment, or both, as the Court shall award."

As in larceny, so where property has been obtained by fraud, the legislature has provided for the *restitution* of such property to the owner, in like manner as if it had been stolen.*

* See the section of the statute at p. 49.

## CHAPTER VI.

### OF FORGERY.

"To *forge*," said an old author, "is metaphorically taken from the *smith*, who beateth upon his anvil, and forgeth what fashion or shape he will."* And there is much reason for the suggestion, *forgery* being defined as "the fraudulent *making*, or *alteration* of a writing to the prejudice of another man's right;"† or, according to another high authority, "the false making, with a corrupt mind, of any written instrument, for the purposes of fraud and deceit."‡ Originally forgery at common law was merely a misdemeanor and punishable by fine and imprisonment; but as the importance of throwing the protection of the law around commercial instruments became from time to time manifest, Acts of Parliament were passed, making the forgery of commercial instruments felony, punishable with death. It would serve only to perplex you were I to indicate which forgery is a misdemeanor and which a felony,—which punishable as an offence at common law, which by statute; but as regards the general observations I may make, be good enough to consider them equally applicable to the one as well as to the other.

In the above definitions the word "make"

* 3 Inst. 169. † 4 Blackst. 247.
‡ 2 E.P.C. p. 852.

must be understood as meaning a false alteration of, or addition to, a genuine instrument, as well as the entire fabrication of a false one. Thus, to create a bill of exchange, by affixing to it falsely the name of one person as drawer, and another as acceptor, would be to *make* or *forge* the entire instrument. Suppose, however, the signature of the drawer to be genuine, and that of the acceptor to be false, the false adding of the name of the acceptor to an instrument genuine in its other parts would be such a "fraudulent making" as is contemplated in the definition. So would any fraudulent *alteration, insertion,* or *erasure,* of a figure, or even a letter, in any material part of a genuine instrument, provided a new operation was thereby given to it. Altering the date of a genuine bill of exchange after acceptance, and thereby accelerating the time of payment, has been held to be forgery.* So altering a bill payable at three, into one payable at twelve months, under the following circumstances:—

A. being in want of 1000*l.* applied to B., who drew a bill for that amount, which A. accepted, payable three months after date. In a few days B. came to A. and said he could not get the 1000*l.* bill discounted, as it was too large, and proposed that two bills for 500*l.* each should be substituted. One bill for 500*l.* was drawn by B., and accepted by A. B., upon this, pretended to destroy the 1000*l.* bill in A.'s presence, but did not do so in fact; on the contrary, he subsequently altered it from a bill at three to a bill at twelve months. It was held that

* Master *v.* Miller, 4 T.R. 320.

this was forgery.* So if a person having the blank acceptance of another be authorised to write on it a bill of exchange for a limited amount, and he write on it a bill of exchange for a larger amount, with intent to defraud either the acceptor or any other person, this is forgery.† So where a party receives a *blank cheque signed,* with directions to fill in *a certain amount,* and to appropriate the instrument to a certain purpose, and he *fraudulently fills in a different amount,* and devotes the cheque to other purposes, he commits forgery.‡.

As to the nature or description of the instruments in respect of which forgery may be committed, I may state generally that the counterfeiting of any *document* or *writing* with a fraudulent intent, whereby another may be prejudiced, is forgery within the meaning of the common law.§ Therefore, where a man was convicted of forging, for the purposes of deceit, another man's name on a paper wrapper used on goods, the Court of Criminal Appeal decided it was no forgery, inasmuch as the wrapper was not a document or *writing,* the subject of forgery at common law, and quashed the conviction.‖ So in a case where the name of an eminent artist, for the purposes of fraud and deception, was painted on a picture.¶

It is not essential that the prejudice sustained should be of a pecuniary nature; although that is

* The King against Atkinson, 7 C. and P. 669.
† The King against Hart, 7 C. and P. 652.
‡ The Queen against Bateman, 1 Cox C.C. 186.
§ 2 E.P.C. 861.
‖ The Queen against J. Smith, 1 Dears. and Bell, 566.
¶ The Queen against Closs, 1 Dears. and Bell 460.

usually the case. A fraudulent alteration of public records or parish registers; a fabrication of a testimonial as to character;* of a letter purporting to be from a magistrate to the governor of a gaol, ordering the discharge of a prisoner; of a railway pass;† of an order for the delivery of goods, have been held to be forgeries at common law. Most of the statutes which were enacted from time to time in reference to this offence were consolidated into one Act, passed in the first year of the reign of William IV., by which capital punishment was abolished in almost all cases (since entirely, by statute 1 Vic. c. 84), and provision made for the better administration of the law in reference to this offence. You would not be interested by a detail of the various clauses of that enactment, and of the cases decided in reference thereto, neither would such be of any practical utility to you, as a general reader.

Various other statutes exist for the punishment of persons guilty of forgery of Bank Notes, Exchequer Bills, East India Bonds, &c., but a knowledge of these can be of but slight interest to you compared with that which relates to mercantile instruments, such as bills of exchange, promissory notes, and orders for the payment of money or delivery of goods.

The statute by which these offences are now punished is the 1 Wm. IV., c. 66, the principal sections relating to mercantile and other instruments being the third and tenth. By the third section it is

* The Queen against Toshack, 1 Den. C.C. 492. The Queen against Sharman, 1 Dears. C.C. 285. The Queen against Moach, 1 Dears. and Bell, 550.

† The Queen against Boult, 2 C. and K. 604.

enacted, "That if any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or bank post bill, or any will, testament, codicil, or testamentary writing, or any *bill of exchange, or any promissory note for the payment of money*, or any indorsement on, or assignment of, any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, with intent in any of the cases aforesaid, to defraud," &c., every such offender shall be guilty of felony; and, by the tenth section, "if any person shall forge, or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged, or altered, any *warrant, order, or request for the delivery or transfer of goods*, or for the delivery of any note, bill, or other security for payment of money, with intent to defraud any person whatsoever, every such person shall be guilty of felony," &c.

Forgery may be effected, as I have already explained to you, either by a complete fabrication of a document, or a material alteration of a genuine one. In the case of forgeries of cheques, the latter mode is generally resorted to. A genuine blank is falsely filled in, and the name of the drawer forged, or his genuine cheque altered by the fraudulent substitution of a sum different from that which he had written. Although the counterfeiting of the name of an existing person is the mode by which forgers ordinarily seek to carry out their fraudulent designs, that is not invariably the case, for several instances

have occurred in which an entirely fictitious name has been adopted, but the crime is no less forgery. It is laid down as clear law by EAST, in his "Pleas of the Crown" (p. 957), and adopted at the present day, that "the making of any false instrument which is the subject of forgery, with a fraudulent intent, although in the name of a non-existing person, is as much a forgery as if it had been made in the name of one who was known to exist, and to whom credit was due." In a case where a prisoner had been convicted of *indorsing* a *bill of exchange* in a *fictitious name*, the judges, on a reference to them, held unanimously, that a bill of exchange, drawn in fictitious names, where there were no such persons existing as the bill imported, was a forged bill.* The same point was decided by the judges in *Lockett's* case, where the prisoner had forged a cheque upon a banker in the name of a fictitious person. The judges observed that it would be a very forced construction of the statute to say that the forgery of a fictitious name, with intent to defraud, was not within it.† So if a person write an acceptance in his own name to represent a fictitious firm, with intent to defraud, it is a forged acceptance; for if an acceptance represent a fictitious firm, it is the same as if it represented a fictitious person.‡

It is not necessary (says Mr. Roscoe) in order to render the act forgery, that the party should gain

* Wilks's Case, 2 East, 957.
† Lockett's Case, 1 Leach 94.
‡ The Queen against Rogers, 8 C. and P. 629.

any additional credit by the fictitious name. A person named *Taft* was indicted for forging an indorsement of a bill of exchange in the name of *John Williams*. It appeared that the prisoner having paid away the bill, the holder applied to a banker to discount it, which he refused to do, unless the holder would put his name upon it. This the holder declined to do, but said he would get the person from whom he received it, to indorse it. He accordingly applied to the prisoner, who immediately indorsed it, "John Williams," which was a fictitious name, and the bill was discounted. On a case reserved, the judges were unanimously of opinion, that this was forgery within the statute; for although the fictitious name was not necessary for the prisoner's obtaining the money, and his object in it, probably, was only to conceal the hands through which the bill had passed, yet it was a fraud both upon the holder and discounter, as the one lost the chance of tracing the bill, and the other the benefit of a real indorser. So where *Taylor*, having got possession of a bill indorsed in blank, gave a receipt for the amount in a fictitious name; being indicted for this forgery, it was objected, that he gained no additional credit by the name he assumed. Being convicted, the case was reserved for the opinion of the judges, who, with one exception, unanimously held that the conviction was right. They said, that though the prisoner did not gain any additional credit by signing the name he put to the receipt, as the bill was not payable to the person whose name was used, but indorsed in blank, it was still a forgery, for it

was done with intent to defraud the true owner of the bill, and to prevent the possibility of tracing the person by whom the money was received.*

Cases have arisen in which a fictitious name has been assumed and used by the party assuming it, and the question has arisen whether using such fictitious name was forgery, and the test usually applied is this: did the prisoner assume the fictitious name for the purposes of deception and fraud in the particular transaction. The following cases, taken from Mr. Power's Roscoe, well illustrate the application of this test: The prisoner *Peacock* was indicted for forging a bill of exchange, dated 3rd of April, 1812, in the name of Thomas White, as drawer. It appeared that the prisoner came to Newnham, on the 21st March, 1813, where he introduced himself under the name of White, and where he resided, under that name, until the 22d of May, officiating as curate under that name. On the 17th of April he passed away the bill in question. Mr. Justice DALLAS told the jury that if they thought the prisoner went to Newnham in the fictitious character of a clergyman, with a false name, for the sole purpose of getting possession of the curacy and of the profits belonging to it, they should acquit him; but if they were satisfied that he went there, *intending fraudulently to raise money by bills in a false name,* and that the bill in question was made in prosecution of such intent, they should convict him. The jury convicted him accordingly, and found that the prisoner had formed the scheme of raising money by false bills before he went to Newnham, and that he went there

* Taft and Taylor's Cases, cited in Rosc. 494.

meaning to commit such fraud. The judges, on a case reserved, were of opinion that where proof is given of a prisoner's real name, and no proof of any change of name until the time of the fraud committed, it throws it upon the prisoner to show that he had before assumed the name on other occasions, and for different purposes. They were also of opinion, that where the prisoner is proved to have assumed a false name, for the purpose of pecuniary fraud connected with the forging, drawing, accepting, or indorsing in such assumed name, it is forgery.*

The prisoner, *Samuel Whiley*, was indicted for forging a bill of exchange, drawn in the name of *Samuel Milward*. On the 27th of December, 1804, the prisoner came to the shop of the prosecutor, at Bath, and ordered some goods, for which, a few days afterwards, he said he would give a draft upon his banker in London, and accordingly he gave the bill in question. No such person as Samuel Milward kept an account with the London banker. The prisoner had been baptized and married by the name of *Whiley*, and gone by that name in Bath in the July preceding this transaction, and at Bristol the following October, and at Bath again on the 4th of December. About the 20th of that month he had taken a house in Worcestershire, under the same name; but, on the 28th of December, the day after his first application to the prosecutor, he ordered a brass plate to be engraved with the name of "Milward," which was fixed upon the door of his house on the following day. The prosecutor stated that he took the draft on the credit of the prisoner, whom

* The King against Peacock, 1 Russ. and Ry., 278.

he did not know; that he presumed the prisoner's name was that which he had written, and had no reason to suspect the contrary; and if the prisoner had come to him under the name of Samuel Whiley, he should have given him equal credit for the goods. In his defence, the prisoner stated that he had been christened by the name of *Samuel Milward*, and that he had omitted the name of *Whiley* for fear of arrest. The judge left it to the jury to say whether the prisoner had assumed the name of "Milward" in the purchase of goods, and given the drafts with intent to defraud the prosecutor. The jury found the prisoner guilty, and the judges, upon a reference to them, were of opinion that the question of fraud being so left to the jury, and found by them, the conviction was right.*

The prisoner, *John Francis*, was indicted for forging an order for payment of money upon the bankers, Messrs. Praed and Co., in favour of Mrs. Ward. On the 15th of August, the prisoner had taken lodgings at Mrs. Ward's house, under the name of Cooke, and continued there till the 9th of September, when he gave her the order in question, for money lent him by her. The order, which was signed "James Cooke," being refused by the bankers, he said he had omitted the word "junior," which he added; but the draft was again refused, and the prisoner in the mean time left the house. The case was left by the judge to the jury, with a direction that they should consider whether the prisoner had assumed the name of Cooke with a fraudulent purpose, and they found him guilty. On a case reserved, all the judges who

* The King against Whiley, 1 Russ. and Ry., 290.

were present held the conviction right, and were of opinion that, if the name was assumed for the purpose of fraud and avoiding detection, it was as much a forgery as if the name were that of any other person, *though the case would be different if the party had habitually used and become known by another name than his own.**

With respect to the apparent *validity* of the instrument forged, it is only necessary to remark that, unless it bear a substantial resemblance to that which it purports to be, it cannot be said to be a forgery; but you must not understand by this that because the fabrication of an instrument falls short of a good imitation it is therefore not a forgery. Far otherwise: for, "where the forgery," says Mr. East, "consists in counterfeiting any other known instrument, it is not necessary that the resemblance should be an exact one; if it be so like as to be calculated to deceive, when ordinary and usual observation is given, it seems sufficient. The same rule holds, in cases of counterfeiting the seals, and coining."† Thus, where the prisoner was indicted for forging a bank-note, and a person from the Bank stated that *he* should not have been imposed upon by the counterfeit, the difference between it and the true note being to him so apparent, yet it appearing that *others* had been deceived, though the counterfeiting was ill-executed, Mr. Justice Le Blanc held that this was a forgery.‡

The case of a man named Collicott illustrates this

* The King against Francis, 2 Russ. by Greaves, 339.
† 2 E.P.C. 858.
‡ The King against Hoost, 2 E.P.C. 950.

point still more clearly. He was a vendor of patent medicines, and sold boxes of Dr. Jebb's pills with the counterfeit label on them. Many of these counterfeit labels were found in his possession entire. They were of an oblong form, coloured with red ink similarly to the stamps for patent medicines issued by Government, and having like them at one end the word "Stamp," and at the other end the word "Office," printed transversely; and on a blank on the first-mentioned end, printed longitudinally the words "value above 1*s.*," and on a blank on the other end also printed longitudinally the words "not exceeding 2*s.* 6*d.*," as the legal stamps also have; and having in the centre a white circle, which in the counterfeit was all blank except that it bore the words "*Jones, Bristol,*" printed thereon; whereas in the legal stamp that circular space was circumscribed with a red ring, and inscribed with another smaller red ring, and in the circular space between the two rings were printed the words "duty threepence," and on the space within the inner red ring on the legal stamp was impressed in red ink the figure of a crown. When the prisoner used these stamps he cut out the circular space bearing the words "*Jones, Bristol,*" and pasted on the packets of medicine the two ends of the label without the middle part, and concealed the deficiency of that part by a waxen seal extending over it. Stamps were uttered in this state by the prisoner, affixed to the pills which he sold. Upon these facts the jury found the prisoner guilty, and it was objected, on his behalf, that the forged stamp was not a sufficiently near resemblance of the genuine stamp to constitute

forgery. Mr. Justice GROSE, in delivering the opinion of the Court, said, "An *exact resemblance or fac-simile is not required to constitute the crime of forgery;* for, if there be a sufficient resemblance to show that a false making was intended, and that the false stamp is so made as to have an aptitude to deceive, that is sufficient. In this case the jury by their verdict have found that this stamp had a sufficient likeness to give it an aptitude to deceive, which is all the law requires."*

And so it has been decided over and over again, in cases of forgery of bills of exchange and other mercantile instruments. Even if the forger, by mistake, counterfeit a wrong *christian* name, in putting the signature to a fabricated document, it will be no less a forgery, as where a man named *Fitzgerald* forged a will commencing, "I, *Peter* Perry," and used *John* for the signature; he was nevertheless convicted and executed.† On this point Mr. East adds: "Though a similarity to a common intent be sufficient, yet it is necessary that the forged instrument should in all essential parts bear upon the face of it the similitude of a true one, so that it be not radically defective and illegal in the very frame of it."‡ To follow out this branch of the subject would be neither interesting nor profitable to you. Legal refinements in respect of this, as well as every other offence, so thoroughly abound, that to present a tithe part of them to your notice would embarrass rather than assist you.

* The King against Collicott, Russ. and R., 212, 229.
† Fitzgerald's Case, cited in Power's Rosc. 485.
‡ 2 E.P.C. 952.

In reference to the terms in the statute, "undertaking, warrant, or order for the payment of money," the judges laid it down as a rule that "any instrument for payment under which, if genuine, the payer may recover the amount against the party signing it, may properly be considered a warrant for the payment of money, and it is equally this, whatever be the state of the account between the parties, and whether the party signing it has, at the time, funds in the hands of the party to whom it is addressed, or not."*

"To constitute an order for the payment of money, within the statute, it is not necessary that the instrument should specify in terms the amount ordered to be paid. Where the order was, 'Pay to Mr. H. Y. or order, all my proportions of prize-money due to me for my services on board his Majesty's ship *Leander*,' it was objected that this was not an order for the payment of money, as no sum of money was mentioned, but the prisoner was convicted, and the judges held the conviction right.

"In the construction of the words 'warrant' and 'order' for the payment of money, it has been held that instruments, which in the commercial world have peculiar denominations, are within the meaning of those words, if they be, in law, orders or warrants. Thus, a *bill of exchange* may be described as an order for the payment of money, for every bill of exchange is, in law, an order for the payment of money, though not *vice versâ*. So a bill of exchange is a 'warrant for the payment of money,' and may be described in an indictment as such, for, if genuine, it would be a voucher to the bankers or drawers for

* Vivian's Case, 1 C. & K. 719.

the payment."* So, a *cheque* is an *order* for the payment of money, even though it be post-dated.

A forged paper purporting to be an authority signed by three officers of a benefit club, to receive the money of the club lodged in a bank, was held, on a case reserved, to be well described either as a *warrant*, or as an *order* for the payment of money.

If, however, the forged instrument does not, upon its face, *purport* to be an order, and the person in whose name it is drawn has no right to command payment, it is not an *order* for the payment of money within the meaning of the statute; but, on the other hand, if, upon its face, it *does* purport to be an *order* which the party has a right to make, it is such an order as is contemplated in the Forgery Act, and so even if the party whose name is assumed as signing it have no such right, or do not exist; for it matters not whether the person exist or not, or has the right to draw such an order, for the order assumes those facts, fraud may be effected by it, and therefore it is a forgery. These remarks are applicable generally to the question what is a warrant or order for the delivery of goods, or for the payment of money.

You have now, I hope, a general notion, which is all I seek to impart to you through these pages, of the law of forgery. You have seen what, in the eye of the law, constitutes this offence, and it only remains for me to remark that in this, as in other alleged offences, the accused is presumed to have acted with a corrupt mind and intention—an intent to defraud. Here, again, the old maxim comes with great force:

* Power's Rosc. 505.

every man is presumed to intend the natural consequence of his acts. If a person without any authority affix the name of another to a negociable instrument, such as a bill of exchange, put that into circulation, and obtain money thereby, he is presumed to intend the natural consequence of that act—the prejudice of another's right—for, in the event of his not being able to pay it at maturity, on the forgery being discovered, the person from whom he received the money must suffer; not the person whose name is forged, as I need scarcely stop to tell you, as a man of business. So, in the case of a successful presentation of a forged cheque, the bank and not the customer suffers the loss.

A fraudulent intent on the part of the forger has often been gravely questioned by counsel when defending persons who had forged the names of friends, fully relying upon their own ability to take up the bills or notes before maturity, but whose anticipations had failed; or who, "relying on the kindness of another (a near relation for instance), had used his name on a bill without authority, trusting that such individual would pay it rather than there should be a criminal prosecution." But such suggestions rarely, if ever, prevail, and they certainly never ought to, in this commercial community, against that sound common-sense presumption of which I have so often reminded you. Otherwise all confidence would be destroyed. And while on this subject of using another's name without his authority, I would suggest the propriety of an exercise of greater caution on the part of commercial men in allowing others to sign their names, even "per procuration." The defence of men charged

with forgery has often succeeded when it should not, by reason of the fact that the prosecutor had been in the habit of permitting this practice, upon which has been based the suggestion that the prisoner either had, or supposed he had, an authority in the particular instance in question. Vulgar adages frequently contain a vast amount of wisdom in few words:—"An ounce of *prevention* is better than a pound of *cure*." So much for the *act of Forgery*.

The subject of *uttering* forged instruments I shall dismiss with the remark that the essence of the offence is a full *knowledge* on the part of the utterer *that the document is forged*, and a passing it off with intent to defraud; and for the principle of the law in reference to guilty knowledge and fraudulent intent, I refer you back to the first chapter, and to that upon Fraud.

## CHAPTER VII.

### OF FRAUDULENT BANKRUPTCY.

THE Bankrupt Laws are based upon principles of justice and mercy. For creditors is secured the equitable distribution of the bankrupt's estate, while the latter, if he conform to the reasonable requirements of the law, is protected from molestation, freed from liability, and placed in a position to commence the world afresh and untrammelled. No man, however unfortunate, has anything to dread in yielding to unavoidable pressure, and placing himself in the Court of Bankruptcy, provided his transactions in business will bear investigation. When, therefore, tossed in the sea of commercial troubles, he can no longer hope successfully to contend with difficulties which beset him; when shipwreck and total loss appear inevitable; duty to his creditors and his own interest alike require that, ere his estate be entirely dissipated, he shall declare himself vanquished, and seek that haven in which he will receive not only immediate shelter from the storm, but protection from future annoyance or persecution. But, as in honorable warfare, so here, all must be fairplay—no treachery. If you seek certain advantages in the shape of immunity from past liability, and a charter to trade anew in the commercial world, you must at least entitle yourself to such high privileges by submit-

ting to the test, whether you have acted honorably by your creditors; if so, well and good. If, however, the result of the inquiry prove that you have acted in violation of those rules of common honesty which should be the landmarks and the beacons of every man in his dealings with his fellow-man, then, indeed, the law will no longer protect but visit with punishment, more or less severe, him who has so transgressed. So heinous was the fraudulent conduct of a bankrupt merchant or trader regarded in the last century, that the punishment of death attached to offences which are now, in the ameliorated condition of the law, punishable by penal servitude or imprisonment.

"Bankrupt" is said to be derived from two Latin words, *bancus*, a counter or bench, and *ruptus*, broken; signifying that the bench or counter at which the trader carried on his business, is broken —or, as we say now-a-days, the establishment is broken up. "Fraudulent bankruptcy" is a phrase generally used to denote fraudulent conduct coming within the purview of the criminal law, and to which penal consequences attach. In a more comprehensive, and I think more correct, sense, bearing in mind the true meaning of the word *fraud*, it applies to all such misconduct as renders the bankrupt, under section 256,* liable to the total re-

* The commercial world cannot be too well acquainted with the section above referred to; hence I transcribe it without abridgment:—"If at any sitting or adjourned sitting for the allowance of the certificate of any bankrupt, it shall appear that he has committed any of such offences [hereinafter enumerated], the court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the bankrupt any further protection.

fusal of a Certificate, whether he be liable or not to a criminal prosecution in respect thereto. However that may be, I shall confine my observations strictly to those acts which bring a bankrupt within the operation of the penal sections, as they are called, of the statute which now regulates proceedings in bankruptcy—the 12 and 13 Vic. c. 106—the short title of which is, "The Bankrupt Law Consolidation Act, 1849," by which most, if not all, the previous statutes relating to bankruptcy were repealed, re-embodied, and consolidated into this one, which contains no less than two hundred and seventy-eight

Offences referred to :—

1. If the bankrupt shall at any time after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, or within two months next preceding the issuing of such fiat or the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the law of bankruptcy, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

2. If the bankrupt shall with the like intent have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

3. If the bankrupt shall have contracted any of his debts by any manner of fraud or by means of false pretences, or shall by any manner of fraud or by means of false pretences have obtained the forbearance of any of his debts by any of his creditors.

4. If the bankrupt shall at any time within two months next preceding the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, fraudulently, in contemplation of bankruptcy, and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor, wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever.

5. If the bankrupt shall, at any time after the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy,

clauses, besides schedules, from Schedule A right through the whole alphabet, and on to *B b!*

By three several sections, 251, 252, 253, the offences are defined, touching each of which it is my intention to give you some general information. But before proceeding to do so I wish you to understand that the groundwork of a prosecution under this Act of Parliament is, that the person accused has been *legally* and *duly* adjudicated a bankrupt. Proof of this fact is always a preliminary step in trials of fraudulent bankrupts.

These offences are made felonies, and the first in order consists in not surrendering (having no lawful

and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the Court or his assignees, any debt due to, or from him, or have concealed or made away with any part of his property of what kind soever.

6. If the bankrupt shall, under his bankruptcy, or at any meeting of his creditors, within three months next preceding the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, have attempted to account for any of his property by fictitious losses or expenses.

7. If the bankrupt shall, within six months next preceding the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit, for the recovery of any debt or demand, provable under his bankruptcy, or shall be indebted in costs incurred in any action or suit so vexatiously brought or defended.

8. If the bankrupt shall, at any time after the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

9. If the bankrupt shall, during his trading, have wilfully, and with intent to conceal the true state of his affairs, omitted to keep proper books of account, or shall wilfully and with intent to conceal the true state of his affairs, have kept his books imperfectly, carelessly, and negligently."

impediment, the proof whereof lies on the bankrupt) to the Court of Bankruptcy before three o'clock P.M. of the day limited for his surrender, or at the hour, and upon the day, allowed him for finishing his examination, after notice served upon him in the manner prescribed; and for this offence he is liable to penal servitude for life, or imprisonment, in the discretion of the Court. This may seem a severe measure of justice, but it really is not so, when we reflect upon the immense mischief which may accrue to the creditors of a bankrupt who may abscond, and thus avoid an examination as to his property, effects, &c. At such examinations disclosures may be made, or information elicited, of the greatest importance, through which large assets may be realised, the existence of which was hitherto unknown and unsuspected.

The second offence, attended with a like punishment, is declared in these words: "If any such bankrupt, upon such examination, shall not discover all his real and personal estate, and how and to whom, upon what consideration, and when, he disposed of, assigned, or transferred any of such estate (and all books, papers, and writings relating thereto, except such part as shall have been really and bonâ fide before sold and disposed of in the way of his trade, or laid out in the ordinary expenses of his family;)" he shall be deemed guilty, &c.

The third offence consists of a non-delivery to the Court by the bankrupt on such examination of all such part of his estate, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power (except the necessary wearing

apparel of himself, his wife, and children), and is punishable in like manner as the two preceding offences.

The fourth offence is defined thus: "If any such bankrupt shall remove, conceal, or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony," and punishable by penal servitude for life or imprisonment. Upon general principle, the acts mentioned in the above section must be *wilful*, and, as we have seen by the very words of the last paragraph, the *removal* or *concealment* of property must be with intent to defraud the creditors. It was once thought that a concealment or removal such as is indicated by the statute, if made before the last examination, might be purged by a disclosure *at* the last examination; but that notion is no longer sustainable: if the bankrupt at any time after being duly adjudicated to be such shall remove or conceal property with intent to defraud, he is guilty of a felony, notwithstanding he may make a clean breast, as it is called, of the whole matter, at the last examination.*

The two hundred and fifty-second section makes it a misdemeanor for the bankrupt either in *contemplation* of bankruptcy, or after *an act of bankruptcy* committed, or with intent to defeat the object of the law relating to bankrupts, "to destroy, alter, mutilate, or falsify any of his books, papers, writings, or securities; or make, or be privy to the making of,

* Courtivron *v.* Meunier, 6 Exch. R., 74.

any false or fraudulent entry in any book of account, or other document, with intent to defraud his creditors," and affixes to this offence the punishment of imprisonment for a period not exceeding three years.

Every commercial man will feel that the next section is entitled to most grave consideration. It is very comprehensive in its terms, and should serve as a solemn caution to those whose utter insolvency is well known to themselves, though, perhaps, not even suspected by others, not to go on trading "hoping against hope" for the mere purpose of keeping up appearances and deferring the evil day. Whatever may be said to the contrary, or in extenuation of this conduct, such a course is regarded, very properly, as pursued with no other intent than to defraud the owner of his property—how can it be said to be otherwise when it is, as those whose duty is to investigate these matters well know, the case every day, that men in trade, living luxuriously, to their own knowledge hopelessly insolvent, "under the false color and pretence of carrying on business," buy goods on credit at twenty shillings, send them to an auction-room, and sell them for twelve! The section (253) is in these words: —"If any bankrupt shall, within three months next preceding the date of the fiat, or the filing of the petition for adjudication of bankruptcy, under the false color and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any other person any goods or chattels with intent to defraud the owner thereof, or if any such bankrupt shall, within such time and with such

intent, remove, conceal, or dispose of any goods or chattels so obtained, knowing them to have been so obtained, every such bankrupt shall be deemed guilty of a misdemeanor, and on conviction be liable to imprisonment for a term not exceeding two years, with or without hard labour," &c.

By the 254th section, provision is made for the examination, upon affirmation, of bankrupts and their *wives*, and for their punishment, in like manner as if convicted of perjury, in the event of either giving false evidence.*

I have now laid before you the material portions of the Act which affect the criminal conduct of bankrupts, with such general information and remarks as I have deemed necessary to convey to you a tolerably accurate notion as to what, in a legal sense, is meant by the phrase "Fraudulent Bankruptcy." With the application of the statute to particular facts, the proofs necessary to sustain convictions for any of the offences enumerated, and the technicalities of the subject, I do not trouble you, inasmuch as these are points with which you would not be interested.

* Sec. 254. "Any bankrupt, or bankrupt's wife, who shall, upon any examination upon affirmation, or after making and signing the declaration authorised or directed by this or any other Act relating to bankrupts, and any person who shall upon any examination upon oath or affirmation, or in any affidavit or deposition or solemn affirmation, so authorised or directed, or in any affidavit or deposition, or solemn affirmation, wilfully or corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury."

## CHAPTER VIII.

### OF RECEIVING PROPERTY KNOWING IT TO HAVE BEEN STOLEN OR OBTAINED BY FRAUD.

THIS subject will receive but very slight notice, inasmuch as no information which I could impart can serve to enable you to prevent a person who has stolen, or obtained from you by fraudulent artifice, your property, disposing of it as he may think fit. At the same time it is right you should have a correct notion of the law in reference to this offence, which in the popular mind is often erroneously blended with that of actual theft: the difference between the two being, that a man cannot be said to be a *receiver* unless the property be transferred wholly to his possession, and be wholly out of the possession of the thief. I mention this rather as a matter of general information appertaining more to the science, so to speak, of the law, than as likely to be of any practical utility to you. The law, as it is at this moment, is contained in the 7 & 8 Geo. IV. c. 29, and is in these words:—"If any person shall receive any chattel, money, or valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law, or by virtue of this Act, such person *knowing the same to have been feloniously stolen or taken*, every such receiver shall be guilty of

felony, and liable to penal servitude or imprisonment at the discretion of the Court." And in reference to the receipt of property obtained by fraudulent and false pretences, the fifty-fifth section enacts, "If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, *obtained*, or converted, every such receiver shall be guilty of a misdemeanor."

The gist and essence of this offence consist in the receipt with a full knowledge at the moment of receipt, that the property was stolen or fraudulently obtained.

In order to convict any person of this offence, the preliminary step is to establish that the property was stolen, or unlawfully obtained by some other person than the prisoner. This may be done whether the thief or swindler be amenable to justice or not, for in some cases the thief succeeds in evading justice, and it would be too bad in such a case if the receiver were therefore to escape, for it is truly said, if there were no receivers there would be fewer thieves. Indeed, until the reign of William and Mary, a receiver of stolen property was punishable only as for a misdemeanor, unless he harboured the thief as well as received the goods. In that reign the offence was made felony. Subsequently other statutes were passed in the reign of Queen Anne and in the reign of George the Third, but all were repealed and consolidated by Sir Robert Peel in the Act just cited, by which receivers may

be dealt with and punished as for substantive offences irrespective of the thief or swindler.

Now, as I have already intimated, the essence of this offence is the guilty knowledge on the part of the receiver. The bare receipt, therefore, of goods, although the subject of robbery or fraud,* is no offence, unless that receipt be with a knowledge of the fact of felony or fraud. But here, as I had occasion to remark when upon the question of *intent*, we cannot peep into the mind of man, so *direct* proof of the knowledge on the part of the receiver that the property was stolen or fraudulently obtained can seldom be obtained. If he be present aiding, or in such a position as to be in a condition to aid, the thief or swindler in the very act, or have counselled and abetted him to commit the offence, he is a principal, and may be convicted and punished as such; but unless a receiver shall be overheard speaking of the property as knowing that it was stolen, or we can conceive a man present witnessing the theft, at such a distance as to be unable to render assistance, as for instance looking on a mile off through a telescope, one cannot very well imagine how proof can be afforded of *direct knowledge* that the property was stolen. Here then we must form our opinion by having regard to the circum-

* But the *mere possession* of certain government stores is made unlawful by special statutes, by which positive proof of innocent possession is required *at the hands of the accused*, in the shape of a certificate from the Commissioners of the Navy, Ordnance, or Victualling Office, setting forth the quantities of such stores, and the fact that they had been sold by the said Commissioners, or otherwise setting forth the reason or occasion of such goods coming into the possession of the person in whose possession they may be found. 9 and 10 Wm. III. c. 41.

stances of the case, and the conduct of the suspected receiver. And upon this point I have great pleasure in placing before you the remarks of one of high authority, Mr. ALISON, whose name I have already introduced, and from whose valuable work I have already quoted. In treating of this offence he says:

"Owing to the jealousy and caution so necessary in this sort of traffic, it often happens that no express disclosure is made, and yet the illegal acquisition of the articles in question is as well understood as if the receiver had actually witnessed the depredation. In this, as in other cases, therefore, it is sufficient if circumstances are proved, which to persons of ordinary understanding, and situated as the prisoner was, must have led to the conclusion that they were illegally acquired. Thus, if it be proved that the prisoner received watches, jewellery, large quantities of money, bundles of clothes of various kinds, or moveables of any sort, to a considerable value, *from boys or other persons destitute of property, and without any lawful means of acquiring them;* and especially if it be proved that they were *brought at untimely hours,* and under circumstances of evident *concealment,* it is impossible to arrive at any other conclusion, but that they were received in the full understanding of the guilty mode of their acquisition. This will be still further confirmed, if it appear that they were *purchased at considerably less than their real value, concealed in places not usually employed for keeping such articles,* as under beds, in coal cellars, or up chimneys; if their marks be effaced, *or false or inconsistent stories* told as to the

mode of their acquisition. And it is a still further ingredient towards inferring guilty knowledge, if they have been *received from a notorious thief*, or one from whom stolen goods have, on previous occasions, been received."*

And here, I may observe, the object the receiver may have in receiving the property, provided he knows that it was unlawfully obtained, is perfectly immaterial. It may indeed be without any intention to derive a pecuniary benefit, as to assist the thief, from mere motives of friendship, by concealing the property till a convenient time for removing it elsewhere. Mr. Baron GURNEY said, in the case of a man named *Davis*, whom he tried for this offence, —"If the receiver takes, without any profit or advantage, or whether it be for profit or not, or merely to assist the thief, it is precisely the same."† And Mr. Justice TAUNTON said, in a case tried by him in the same year,—"If a receiver of stolen goods receive them for the mere purpose of concealment, without deriving any profit at all, he is just as much a receiver as if he had purchased them."‡ And, says Mr. Alison, "If the prisoner once receive the goods into his keeping, it is immaterial upon what footing this is done, whether by purchase, pledge, barter, or as a mere depository for the thief."

Besides conveying a superficial knowledge of the law on the subject of the felonious receipt of property, the perusal of this chapter will, I trust, have the beneficial effect of putting tradesmen on their

* Alison's Principles of the Crown Law of Scotland, 330.
† Davis's Case, 6 C. and P., 178.
‡ Richardson's Case, 6 C. and P., 335.

guard against purchasing property unless in the ordinary course of trade, from well known and respectable persons. The law, very properly, looks upon all transactions of an irregular kind with a very jealous eye. Property must be protected—facilities for its conversion into money by thieves and swindlers, abound in this great metropolis, and the utmost vigilance of the police is insufficient to suppress the gigantic evil. Hence it behoves every honest tradesman, as well for the public good as for his own sake—lest he be wrongfully suspected and charged with this offence,—to turn a "deaf ear" to alluring propositions made by strangers to purchase a "cheap lot of damaged goods," or property, which the vendor declares he "is obliged to sacrifice in consequence of a sudden pressure for ready money." Let the honest trader never buy except in open market, from persons whom he knows, and who know him, and he will run no risk of standing at the bar of a criminal court, charged with "receiving goods knowing them to be stolen;" on the other hand, if he do otherwise, he knows the danger and the penalty: and if convicted by a jury of his fellow-tradesmen, *although innocent*, a recollection that he had deviated from the beaten path, and failed to act with proper caution and circumspection, must cause him to feel that he has himself alone to blame.

## CHAPTER IX.

### OF CONSPIRACY.

EVERY one of the offences of which I have treated in the foregoing pages may be the subject of the last to which I shall call your attention—Conspiracy.

*Conspiracy*, as understood in a legal sense, was defined by Mr. Baron ALDERSON to be "a crime which consists either in a combination and agreement by persons to do some illegal act, or a combination and agreement to effect a legal purpose by illegal means." In this offence, as in every other, there is some ruling feature, some one of its ingredients which constitutes, as it were, the "corner stone" of the structure. Here you cannot fail to have observed, on reading the definition, that the "combination and agreement of persons" is the very gist and essence of conspiracy. It is therefore obvious that one person, unless connected with another or others, cannot be guilty of this offence; there must be two, at least, and there may be an indefinite number. A man and his wife cannot be guilty of conspiracy, because they are considered by the law as one person, except under circumstances to which it is unnecessary here to advert. But if they be associated with others, then the wife may be convicted as a co-conspirator with some of the others. So jealous is the law in respect of combinations of

persons, that an association of men to do either an unlawful act, or even a lawful act by unlawful means, is declared to be an offence, although nothing be done in pursuance of the agreement or confederacy. It is said by high authority,* "*An agreement by several to do a certain thing may be the subject of an indictment for conspiracy, though the same thing done separately by the several individuals*, without any agreement between themselves, *would not be illegal*, as in the case where several persons *conspired* to hiss at a theatre, Lord MANSFIELD held it indictable, though each might have hissed separately: for, if several persons concur in the act, they will all be guilty of a conspiracy, notwithstanding they were not previously acquainted with each other."

The question is one of too much nicety to be entered upon here, as to the precise nature of the combination of individuals for the purpose of carrying out a special object which will render them amenable to the criminal law as conspirators. We live in a different age to that in which Lord MANSFIELD flourished, and the opinions pronounced from the Bench in his days must be taken in connexion with the times in which he lived. Political bias influenced more or less the purest minds, and neighbouring continental influences caused every meeting of persons, even for the exercise of their constitutional right to discuss public matters, to be regarded by those then in power with an instinctive dread that some horrid plot was being concocted. But with con-

* 2 Greave's Russ. 674. Citing the observations of Lord MANSFIELD and Mr. Justice GROSE.

spiracies having a political tincture we have nothing whatever to do. These cursory allusions to the past have been made by me, simply with a view to inform you how it happened that conspiracy was treated in so comprehensive and strict a manner in days of yore.

As to journeymen conspiring to compel masters to raise their wages, it is said, "each may insist on his own wages being raised, but if several meet for the same purpose, it is illegal, and the parties may be indicted for a conspiracy." Therefore a combination amongst workmen not to work, and to prevent others from working, except at certain wages; or to compel masters to discharge such men; are conspiracies within the meaning of the law. And it seems that if masters combine together by unfair means to lower the rate of wages, they are equally liable to be indicted for a conspiracy as the men who conspire to raise them; and justly so.

The late Lord Chief Justice TINDAL, when presiding at a Special Commission held at Stafford, in 1843, to try workmen and others charged with riotously demolishing houses, made the following remarks on this important subject, in his charge to the Grand Jury: he said, "The first observation that arises is, that if the workmen of the several collieries and manufactories, who complained that the wages which they received were inadequate to the value of their services, had assembled themselves peaceably together for the purpose of consulting upon, and determining the rate of wages or prices which the persons present at the meeting should require for their work, and had en-

tered into an agreement amongst themselves for the purpose of fixing such rate, they would have done no more than the law allowed. A combination for that purpose and to that extent (if, indeed, it is to be called by that name) is no more than is recognised by the 6 Geo. 4, c. 129, by which statute also exactly the same right of combination, to the same extent, and no further, is given to the masters, when met together, if they are of opinion the rate of wages is too high. In the case supposed, that is, a dispute between the masters and the workmen, as to the proper amount of wages to be given, it was probably thought by the legislature, that if the workmen on the one part refused to work, or the masters on the other refused to employ, as such a state of things could not continue long, it might fairly be expected that the party must ultimately give way whose pretensions were not founded in reason and justice; the masters if they offered too little, the workmen if they demanded too much."*

The law of conspiracy, if administered carefully, extreme caution being required that it shall not be perverted to improper purposes, is one of very wholesome operation.

A recent trial before Lord CAMPBELL, in the Court of Queen's Bench, which, at the time, almost entirely engrossed public attention, may be referred to as an instance of the great benefit to society which may be derived from prosecutions for this offence. In no other way could the parties to the gigantic frauds disclosed in the course of that protracted and memorable investigation, have been

* Carr. and M. 662. (*a*.)

made responsible to the criminal laws of their country.

It often happens that two or more evil-doers agree to perpetrate some crime, or effect some fraud, each taking a different part in the transaction; but by timely discovery, or in consequence of some fortunate mismanagement on their part, the design is frustrated, and the whole scheme proves abortive. Suppose, which is frequently the case, no one act of any one of this band of miscreants is cognizable by the criminal law, the common purpose of the whole being defeated: unless by means of indicting them for a *conspiracy to do* that which, happily, they were prevented doing, they must escape all punishment. The "combination and agreement" to do the deed constitute the offence, though the end be not accomplished: the frauds of an association of swindlers are often reached and punished in this manner; the punishment attaching to a conviction being justly very severe.

As illustrative of the purposes to which the law of conspiracy has been held to be applicable, Sir WILLIAM RUSSELL* tells us "the conspiring to obstruct, prevent, or defeat the course of public justice; to injure the public health, as by selling unwholesome provisions; or to effect any public mischief, as by raising the price of public funds by illegal means; and all confederacies whatsoever wrongfully to prejudice a third party, are highly criminal at common law." So is conspiring to charge a person with the commission of an offence, whether the object be to extort money from him, or merely to subject him to

* 2 Russ. by Greaves, 674.

pain and ignominy. Indeed, there is a case reported, where one Macdaniel and others conspired to charge an innocent man with robbery, for the purpose of receiving a reward which had been offered, and the unhappy man was convicted and executed.*

A combination amongst persons, by indirect means, to prevent a man carrying on his trade, and thereby impoverish him, has been held to be a conspiracy at common law; and Lord MANSFIELD said he considered it to be in restraint of trade, and so affecting the public.† It was held by the same learned judge that, though persons in possession of goods may sell them at such prices as they individually may please, yet if they confederate, and agree not to sell them under certain prices, it is a conspiracy.‡ Where, in an action for libel, it appeared that certain brokers were in the habit of agreeing together to attend sales by auction, and that one of them only should bid for any particular article, and that after the sale there should be a meeting, consisting of themselves only, at another place, to put up to sale among themselves, at a fair price, the goods that each had bought at the auction, and that the difference between the price at which the goods were bought at the auction and the fair price at this private re-sale, should be shared amongst them, Mr. Baron GURNEY said, "Owners of goods have a right to expect at an auction that there will be an open competition from the public; and if a lot of men go to an auction, upon an agree-

* 1 Leach, 45.
† Turner's case, 13 East, 228.
‡ Eccles' case, 1 Leach, 274.

ment amongst themselves of the kind that has been described, they are guilty of an indictable offence, and may be tried for a conspiracy."* This practice is commonly known amongst a certain class of brokers as the "knock out."

The following cases have been collected and quoted by Mr. Roscoe, in which the persons charged were convicted of conspiracy :—

Three persons conspired, that one should write his acceptance on a pretended bill of exchange, in order that the second might, by means of this acceptance, and of the indorsement of the third, negotiate it as a good bill, and thereby procure goods from the prosecutor.† So an indictment may be maintained for a conspiracy by irresponsible persons, to cause themselves to be believed persons of considerable property, for the purpose of defrauding tradesmen.‡ So, if a man and woman marry, the man in the name of another, for the purpose of raising a spurious title to the estate of the person whose name is assumed, it is indictable as a conspiracy, and in such case it was held not to be necessary to show an immediate injury, but that it was for the jury to say whether the parties did not intend a future injury.§

By way of bringing my remarks on this offence to a conclusion, I may here repeat that any combination of persons to effect a public mischief, or a private fraud, or to do another a private wrong, is

* Levi against Levi, 6, C. and P. 240.
† Hevey's case, 2 E. P. C. 858 (*n.*).
‡ Robert's case, 1 Camp. 399.
§ Robinson's case, 1 Leach, 37.

regarded as a matter affecting society at large; and upon that principle, if upon no other, treated as a criminal offence, and punishable accordingly.

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I have now completed the task I originally set myself—one far more difficult of accomplishment than I at all anticipated, by reason of the necessity, on the one hand, for avoiding, as much as possible, all technicalities, and on the other, an anxiety not to leave any important point connected with the respective subjects wholly unnoticed. But my professed object being, as I have already stated, to lay before you no more than a superficial sketch of the law relating to the subject matters of which I have treated, I wish it to be well understood that I have been compelled to leave many points (of importance to the lawyer) wholly untouched, and have merely glanced at others, lest by entering into abstruse questions I might have perplexed you, and thus defeated the simple purpose at which I aimed—to enable you, in conformity with the advice of BLACKSTONE, and without much trouble or sacrifice of time, to become "acquainted" with some, at least, of "those laws with which you are immediately concerned."

# INDEX.

THE END.